

ADMINISTRATIVE PROBLEMS OF INDIA

*Corruption in the Public Administration and
its Remedies.*

BY

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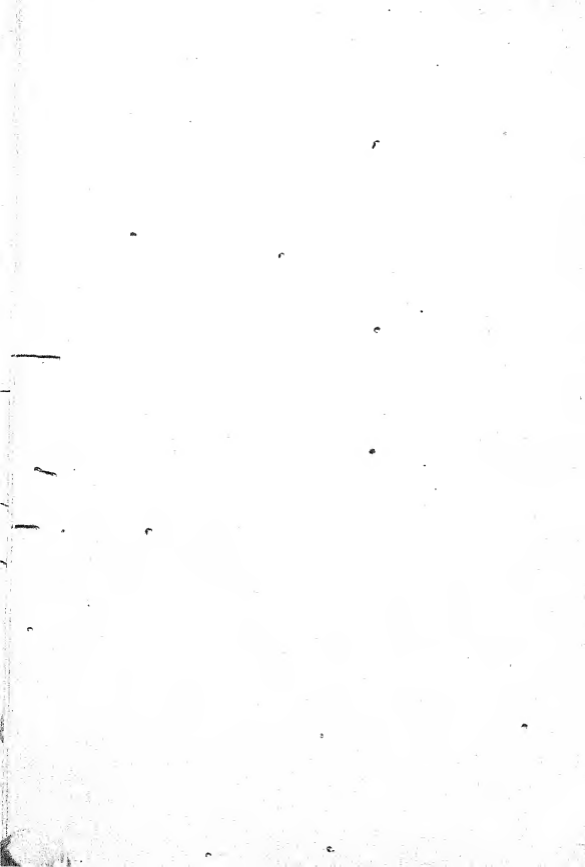
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DEDICATED

TO

MOHANDAS KARAMCHAND GANDHI

" Father of the Indian Nation—though gone he will live for ever and for ever in the hearts of millions yet alive and millions and millions in India yet to come—their Bapuji, their Gandhiji, their Mahatmaji, their very all and their own—they will miss him in the outer world but they will find him in their hearts and with weak minds, frail limbs and in darkness all about they will strive to follow the light that he-lighted and will continue to light in the service of India he so gloriously and righteously served to his last breath".



INTRODUCTION

With that unerring instinct and clarity of vision to see and realise what is most needed in the India of his heart that he was building up, and which was distinctly his, Mahatma Gandhi spoke thus in the prayer meeting of 26th January 1948—only four days before the darkest day of India :—

“The subject of corruption is not new. Only it has become much worse than before. Restraint from without has practically gone. Corruption will go when the large number of persons given to the unworthy practice realise that the nation does not exist for them but that they do for the nation. It requires a high code of morals, extreme vigilance on the part of those who are free from the corrupt practice and who have influence over corrupt servants. *Indifference in such matters is criminal.* If our evening prayers are genuine they must play no mean part in removing from our midst the demon of corruption.” The evening prayers have stopped. The voice of purity and patriotism, that had been sanctifying and inspiring India for decades, was stilled by the hand of evil and of shame on his way to the very prayer meeting. One must take up the cue from his life and from his closing words and each in India must bear the cross and execute his idea. In a social organism, as developed today, the State has a wider influence on life than at any time in history. The State functions in a democracy through its politically elected Ministers and its permanent administrative staff. It is the democratic control of both these parts in the Sovereign Democratic Republic of India that can ensure the all-round and balanced evolution that the Indian

national idealism has yearned for. But democratic control can only be based on democratic education—an education that can develop, in a growing number if not in all of its citizens, capacity for righteous judgment to bear on all public problems, institutions, and individuals. The problem is now to ensure this new democratic education in the context of the present day India and of each Province. Each Province has to develop and bring out its best not to grow into a hide bound Provincial individuality but to contribute its utmost to the growth and enrichment of the Indian national culture and outlook. After all that is said and done, India is one, the Indian nation is one. It is one integrated whole, with one soul and one personality of spiritual richness, of yearning for pursuit of truth and of reasoned tolerant forgiving and comprehensive outlook towards life which Gandhiji symbolised. Indian nationalism, thus regenerated and thus enriched, will contribute to the international culture its distinctive philosophy of life and the tested technique for the realisation thereof. The India of tomorrow has to be fitted, therefore, to play its part in the Provincial forum, as well as in the context of the Indian National life, and in the international sphere. It is obviously not the place here nor is it the intention of this introduction to work out in details the plan and the programme for carrying out that education. But in its barest anatomy some indication must be left. If the Indian has to play his part, as discussed above, the social scaffolding, as Aldous Huxley so pertinently drew world attention to, must be rightly and surely rebuilt to produce the type on the essentials of its aged old genius. That social scaffolding must be based on righteous public opinion and righteous individual and collective behaviour. For the evolution of that opinion, for the development of that code of behaviour,

certain contributory agencies must be perfected. Social evolution in India after approximately two centuries of denationalising, depressing, yet aggressively efficient foreign rule, is thwarted by the persistence of vicious circles of the psychology of the repressed and the demented Indian humanity. That humanity was shut out of all the opportunities for solving its major problems of life in the individual and of the life in groups or in the larger aggregates. Non-use has paralysed its powers. With foreign political shackles removed the disjointed motor centres and the disintegrated and dwarfed mental powers have to be co-ordinated, synthesised, re-invigorated, and brought into working level again. The problem is who is to start the work and initiate the spiral movements to liquidate the vicious circles and at what points they must be started and how? Public opinion must be created on each and every one of the crucial points. With the great life of Gandhiji as the objective personality to draw inspiration from, yet with little of his powers and still less of his spirituality, an attempt has to be made in the spheres that he pointedly drew India's attention to. The individual, with a moral background, has to take up the work to discharge his responsibilities and then groups will come in and in yet larger groups. As Dr. Lindsay of Balliol College once pointed out "Nothing so much makes possible a public opinion which is real, because it is based on free and frank discussion, as the existence of independent voluntary organisations with public purposes" (The Essentials of Democracy). We hear the talk of nationalisation of industries and socialisation of the economic life of the nation. As theories and ideals they are good as far as they go. But the step of the utmost importance is the nationalisation of the individual, the socialisation of his conscience, the democratisation of his soul. That will

be the objective consistent with the genius of India—its earliest and scientific idealism in the Vedanta—accepted but dimly realised. Both Gandhiji and Mazzini wanted to spiritualise Politics. Gandhiji wanted to spiritualise the individual and thus the politics. He was primarily and essentially a man of religion and secondarily a man of politics. Mazzini was primarily hurt by the sufferings of Italy under foreign rule and thus was interested in politics first but early discovered that politics without spiritual life was infructuous. Gandhiji spoke in the terms of India's perennial philosophy and in the light of India's verities. To India that technique rings true. The immediate first step should be to create public opinion by individual and group efforts. The nucleus, thus formed should, thereafter, tackle the major agencies for educating wider circles with that view.

For the external implementation the Education and thus the Universities, the Press, the Broadcasting, the type of Public men and the standard of Public morals, the administrative machinery (its form, its personnel, its incorruptibility and its efficiency) must have to be tackled. All must be hitched on to function to national welfare. These will need an all-out campaign. The campaigners must be spiritualised national missionaries in each sphere. No nibbling, no wavering, could be permitted nor could be forgiven.

In the Universities, in the Educational institutes, in their Committees of management, the teachers and the taught all seem to be unconscious or half-conscious of their responsibilities to India. But they are over-conscious of what they consider to be their rights, their privileges, their prerogatives and their dues. The intellectual and the spiritual contributions of our Universities, with rare exceptions, have not been such as India can be

proud of. The same lust for power, for pelf, for plagiarism, for cheap exhibitionalism, the same hustle for eminence, are as rampant here as in any other sordid spheres of national life. Nepotism and Canvassing at their worst are not unknown. With the taught again, i.e. the students, indiscipline in unheard of forms is there. To strike an invigilator of the Examination Hall even to death has occurred. Examinees have withdrawn in a body because the questions were not to their liking. To go on strikes to realise an idea is common enough. The University authorities have annually to investigate into dozens of Answer Papers which bear palpable marks of malpractice, even for examinations for advanced students. Party Politics dominate most student organisations. They are the inevitable results of the action of party politicians who still never hesitate to use youths for personal political purposes completely regardless of their effect and of the students' future. If educational institutions and the people and students connected therewith cannot set the standards of decent and democratic discipline it is impossible to lead a country or a social organism through a balanced evolution. Education loses its moral and spiritual content. Yet no sphere is more suited, and is reasonably expected, to develop standards of democratic behaviour and highly disciplined spiritual "behaviour-patterns" for the rest of the people to follow and to emulate. It will be interesting to experiment on democratic methods in educational organisations. They should have the privilege of electing Chancellors and Vice-Chancellors for specific terms through the Electoral College of registered graduates with definite precaution against caucuses manipulating affairs, of electing management Committees, electing syndicates. It will be equally interesting to experiment on appointments of all types, examiners, paper setters

and authors of books for syllabuses etc. being done by a thoroughly scrupulous and competent commission the personnel of which can be elected with care. There must be competent and wise elements both among the educationists and the teachers on the one hand and among the responsible students on the other. They are now lost in the mob and completely sterilised. It is time that the Educational Institutions develop the highest and the best type of democratic functioning and the University teachers and students give the lead to the country it so desperately needs. "A University never needs a pile of majestic buildings and treasures of gold and silver. What it needs most of all is the intelligent backing of public opinion" (Mahatma Gandhi—Harijan, November 2, 1947).

The next important agent to effectively contribute to the evolution of democracy on right lines by educating Public Opinion is the Press. The Press in India had a strenuous struggle to keep itself alive and discharge its duties. The history of the Press legislation in India will easily prove it. In the period of the national struggle for Independence it played its part remarkably well. It can hardly be doubted that its contribution to the cause of the Country has been great. Yet conditions have changed. The Newspaper Control Ordinance and the National Front Movement during the war, with many alluring baits, had subtler demoralising effects on the Independence of the Press than direct attacks thereon could do. The public is not conscious of this demoralisation. Demoralisation has a tendency to gather momentum in a downward incline. Probably Lord Acton would have agreed that financial surplus, like power, corrupts and absolute surplus absolutely corrupts. Newspapers are no exception to it. There are few papers in India, still less in Bengal, which can win a prize today for moral rectitude, for fearless advocacy

of people's rights, and for balanced, studied and capable directives for the solution of serious problems that confront India and Bengal. Advertisements at unheard of rates and the thirst for circulation at enhanced prices obscure the vision. When the task was to create mass excitements, on the only issue of wiping out the foreign rule, it was easy. But when the serious problems have to be solved, group and sectional interests have to be analysed, evaluated, and judged for the best balanced evolution of the social organism as a whole their wits go wool-gathering. The equipment is not equal to the task. The ruthless exploitation of intellect to subserve a self interest develops. The editors and the sub-editors are suborned and news repressed, re-shaped and re-arranged to support a view. Editorials are drawn up to boost a fiction, under the cover of truth—the fiction of a party, of a policy or of the excellence of an individual. The incentives to overt action are provided by the thirst for pelf and the thirst for power. The impulse for social service is caricatured. The first two incentives combined largely and either of them separately dominate the newspaper world today in this country. There are exceptions but they are rare. The main fact is that most, if not all the newspapers, are owned by individual proprietors—as individuals and groups they represent their own self interests or the self-interests of the economic class or the political party with which they align themselves or even of individuals to whom in self-interest they are bound. The nationalism they pose for, on closer scrutiny, is found to be the same ubiquitous individualism in more or less in as ugly an aspect as elsewhere. It is for this that one finds that most papers preach for socialism for everybody else but grip at the capitalism of their own. This contradiction is in the constitution itself. It is in the very situation. It is this

contradiction that will thwart any effective evolution of a correct idea—prejudices and pre-conceptions thwart. There is a distinct tendency in India to the Press being controlled by a few Press Lords. Public opinion in the true sense is largely muzzled or is ill-expressed. Proprietary newspapers normally are clogs to the growth of a democratic idealism. The position is worse if the proprietors have little or no education to inspire them. It is at its worst if they are inspired by greed for pelf or for political and social power and not by the inspiring motive to work as agents for social service. It is possible that the Astors, the Cadburys and the Rowntrees in England can point to family traditions of public service. It is true that the proprietors of the Times have made legal arrangements by which a transfer of shares in the Times Holding Co. Ltd. needs the consent of a body of trustees that include the Lord Chief Justice, the Warden of all Souls College, Oxford, the President of the Royal Society and so forth. But yet there can be no mistake as to the Social Section to which the Times bears allegiance. It is possible that the Manchester Guardian—though a proprietary paper—steers straighter along Democratic lines. At least that is possibly the opinion in India. Here in India, however, that sense of Public Service is not yet in view. Yet no country needs it more tragically today than India. In India the position is rendered more difficult by two centuries of aggressive dwarfing of growth and its consequential effect on the level of the political, moral, and intellectual consciousness of the people. A way out, however, has to be found. It is both difficult and expensive in the context of the present day economic and cultural levels of India. The Reynolds News is run by a co-operative organisation, while the Daily Worker owes its existence to a band of sincere workers who, though

communists,—may provide a distinct pointer to a way out. If democracy is to succeed, and it cannot succeed without a reasoned, well thought out and balanced public opinion, there must be a pitch up to a higher national level for the Newspapers in India. The public must be well aware of it. The Broadcasting and the Radio which are fast becoming very important educators of the Public mind need very careful watching too from the start. There have been instances to warn the public that it is essential that the system does not degenerate into a jejune monotone of a favoured group or that of any dull bureaucracy.

Running a modern State even under normal conditions is both a science and an art. To evolve India out of the debris and the wreckages of Imperial Rule that has just ended she needs men whom an H. G. Wells would categorise as "dedicated super-intellectuals". But except about half a dozen at All-India level none are in view. During the closing forty years of the struggle with Imperialism men of a particular type with a particular technique joined the movement. Most of the workers for some period or other spent their time in jail. Jail entry was and is accepted as an indisputable proof of patriotism and devoted national service. Others engaged in revolutionary struggle were hunted by the sleuth-hounds of Imperialism. The technique of that group was different. To collect money, to collect arms, and keep the group in being, it used violence of which the foreigners and their active satellites were not the only victims. Many thus rationalised the criminal instincts. The end justified the means and lit a halo round the men. Even when the proof of independence-winning ideal was absent the halo persisted and many of them took full advantage of it. With Independence secured there was a flutter or a race from such types to present before the country and the

Government the "bills for sacrifices" supported or assumed to be supported by vouchers of jail stay. From a sub-procurer in a rice procuring agency to a membership in the Cabinet there came strong demands for the payment of the bills. Dressed in immaculate white khaddar, moving in and about the Secretariats or with the Ministers the "sacrificers" did not always deal in markets which were equally white. In vain Gandhiji tried to impress on them the absurdity of the position and in vain did Acharya Kripalani try to draw attention to a correct interpretation of the ethics of "Sacrifices". Exceptional men there are among the sufferers with serious sacrifices but who is to sift the wheat from the tare? So the tare dominates. If the Province of Bengal and free India have to develop into real genuine modern States the highest efficiency and an incorruptible character should be the only tests for filling in positions of trust and responsibility. "Sacrifices" when proved and genuine, if must be paid for, should be paid for either in pensions or in cash.

Unless this is done the other absolutely indispensable condition for a good democratic Government cannot be ensured—namely an efficient and an incorruptible public service. If the Ministers are below par in intelligence, efficiency or integrity, it is impossible to keep the public servants above par. If neither be above par, the State will stagnate, the taxes will be wasted, and the pressing problems of poverty and disease will eternally remain unsolved and the country will drift to chaos and anarchy. There must be a rational technique for the reconstitution of the State. Each Province must be on its guard or it is certain that the country will go down. Corruption in public administration is like a cancer. It must be bodily removed or it infects every tissue. Inefficiency is a creeping paralysis. At each point it adds to people's misery.

At crucial points it is a great steriliser. The coefficient of efficiency in India hitherto was not high. It is probable that foreign rule chilled enthusiasm. Stagnated and politically repressed India must be galvanised into action now to cover up by forced marches the lost ground and be abreast with the most advanced countries. Except at great perils India cannot afford to permit either efficiency or integrity to be gibbed at. The price of liberty is perpetual vigilance. The price of rectitude is perpetual watchfulness. At the end of a very depressing epoch and at the beginning of a glorious one the problems of the country are found to move in vicious circles. The astute technique lies in discovering the crucial points at which spiral movements must be initiated which will ultimately liquidate the circles and straighten up the upward urge to a glorious future. One of the vital crucial points is that which concerns itself with the complete integrity and efficiency of the public services which will run the machinery. Such machinery alone can effectively work, in the concrete, the ideologies in theory and the schemes on paper. The perfection of that machinery in efficiency and integrity and to inspire it with the impelling and unquenchable urge for national service is a task of surpassing importance. This task in the present context is to be carried out by voluntary organisations and by individuals who will dedicate themselves to the task. It is such a group voluntarily organised that rid the British Public Services of England of inefficiency and of corruption and worked ceaselessly since the days of Lord North to the present day. Great had been the achievements of that group in their own country and with that are associated the names of Benjamin Jowitt, Sir Stafford Northcote and dozens of others. In America the fight between the supporters of spoils system and merit system

and the circumstances of the death of President Garfield are well-known. Individual nepotism and political patronage had to be ceaselessly fought against there and the technique developed and organised to prevent the atavistic returns as they are apt to do. I repeat that the price of rectitude is perpetual watchfulness. India stands in dire need of it. In presenting this volume short notes have been recorded of the points at which the free evolution of democratic idealism is or is likely to be clogged. India and Bengal show definite tendencies of developing caucuses for exploiting the country to individual and group self interests. They work with a fanfare of propaganda of patriotic fervour for the "common man" and for the "masses" or with stories of "sacrifices" in the struggle for freedom. Unless individuals and voluntary organisations can develop study centres and associations and organisations for comprehensive watchfulness the future is gloomy indeed. There must be in the people of India of today and of tomorrow men determined to dispel the gloom. It is essential that they should individually and collectively start the work for that evolution of India and of each Province which had been the dream of scores of men and women working in diverse spheres and in different parts of the great country for the last two hundred years. Each one and each group should choose the sphere where each may find interest in. The cumulative effect of such efforts is bound to influence the public opinion and to direct it on right directions. Caucuses from their very nature will deny chances to those whose activities will militate against their vested interests. The greatest good of the greatest number, the rapid healthy evolution of the social organism as a whole to the goal of a socialised democratic state of supreme effectiveness and highest efficiency, is the goal. It is with this ideal ins-

inspired by the spirit of the Great Leader whose words have been quoted at the start that these pages, with all their imperfections, are presented to the public to create an interest in one of the most urgent of India's present day problems.

The history of the attempt here is short. It started with a request from the Government of Mr. Casey of Bengal in 1945, when the Ministry was suspended, to come up and join the administration in devising ways and means to stop corruption. I had to decline the offer as I knew that the pre-partition Government of Bengal, as then constituted, had neither the ability nor the will to stop the rapid deterioration in the morale of the Public Services. In fact I believed—as I showed in a number of articles written for and published in the *Modern Review*—that this deterioration in the morale and in the integrity—and the efficiency of the Public Services and in the administration was the direct and the definite result of certain policies followed by the British-Muslim combine in the administration. In the interests of the country, however, I was still prevailed upon to take up the work, which it was impressed on me was one of fundamental national importance. I, however, stipulated that the work must be an honorary one which would secure for me the freedom to state my views unhampered by any feeling that I was a paid servant of the administration under any obligation to subscribe to a particular view. The Government of Mr. Casey was good enough to agree. By the time, however, that the report was submitted in 1946 the Muslim-League Ministry came back to power. Aided by certain Indian Members of the Indian Civil Service—and such members have never been absent in the past nor are absent now—the Report was shelved. The then Ministry did not think it discreet to publish it and as often happens the file was played upon though the suggestions were nibbled at and

utilised from time to time. In the present context the Ministers in power have not the experience and hence the grasp of the situation. The faded remnants of the bureaucracy have neither the will nor the capacity to organize the all-out Campaign against dishonesty and inefficiency in the Public Administration. The Public is occasionally regaled with speeches by people in high places or with resolutions and statements in Press conferences. But any one in the know, with a touch on the pulse of the administration, is conscious that the deterioration persists and it grows. The final arbiter in a democracy is the Public though in India or Bengal the embryo is yet in the shells. None the less I feel that it is to such as are born and to such yet unborn that the pathology of the deadly disease and the remedies thereof should be presented. This I do, with no apologies, stirred on by the great silence of tragic Thirtieth January, 1948.

PREFACE

The prevalence of corruption in the Public Administration had been the subject of strong and persistent criticisms in the Press and by the officials and non-officials of the highest positions.

The Government of Bengal by its resolution No. 2392 of 6 November 1945 resolved :—

“There have recently been several instances in which ineptitude in the conduct of departmental proceedings and the resulting inadequacy of the findings reached and punishment awarded have been unfavourably commented upon and it is expedient to devise ways and means for effecting an improvement in the procedure and results of departmental proceedings. The Governor is accordingly, pleased to appoint Rai Bijoy Behari Mukherjee Bahadur, Retired Director of Land Records and Surveys, Bengal, to undertake an enquiry on the terms of reference as set out below :—

- (1) to examine and report to Government on the appropriateness and adequacy of the procedure for departmental enquiry into allegations against Government servants ;
- (2) to recommend, where necessary or desirable, changes in the procedure with a view to ensuring a more prompt and satisfactory disposal of cases ;
- (3) in particular to examine and advise on measures to ensure—
 - (a) that the available information, on which it appears that an investigation with a view to departmental proceedings is desirable reaches the appropriate superior authority at the earliest possible moment :

- (b) that a qualified agency is available to conduct or assist in conducting the investigation and preparation of cases where assistance ordinarily available to the enquiring officer is not likely to be adequate or appropriate :
- (c) that a qualified agency is available in cases of importance, difficulty or intricacy—
- (i) to assist in or conduct the presentation of cases before enquiring officers with a view to making sure that the proceedings are not vitiated by informalities that the finding (or the report to superior authority) is supported by the evidence in the case, and that the order (where the enquiring officer is empowered to pass an order) is appropriate, and
- (ii) to advise Government (or the final appellate authority), in any case referred to it, upon the regularity of the proceedings and the appropriateness of the order passed or recommended, and
- (4) to advise Government whether, and if so in what cases or classes of cases, and in what conditions, it is expedient to specify by rule that an agency such as is indicated in article (3) (b) & (c) above shall conduct or assist in conducting the investigation and/or presentation and/or hearing of departmental proceedings.

ORDER

Ordered that the resolution be published in the Calcutta Gazette and that copies be forwarded to the Departments of the Secretariat, the Accountant General, Bengal, and to Rai Bijoy Behari Mukherjee Bahadur.

It was implemented by the Bengal Chief Minister's Department letter No. 2393 Estd. of the same date in which it was stated that the terms of reference mentioned in the

resolution are not intended to be exhaustive and added to the resolution the instructions :—

“The terms of reference mentioned in the resolution are not intended to be exhaustive. Although the terms of reference in form confine themselves to matters of procedure, it is recognized that an inquiry on these lines may well involve a comparative study of the laws and rules substantive as well as procedural—obtaining here and elsewhere, relating to inquiries into the conduct of public servants. I would invite a reference in this connection to the Public Servants Enquiry Act and Ordinance of 1943, to the system of administrative law in France and the United States of America and to the procedure in the conduct of courts martial with particular reference to the Judge Advocate's Branch. Government would welcome any recommendation which you may be led by your inquiry to formulate, for a revision of legislative provisions.”

2. I took up the Enquiry on 7 December 1945 and examined all the papers that the Chief Minister's Department could furnish me with. They included (a) specific cases of disciplinary action; (b) the notes and instructions that were issued out of them; (c) the files dealing with proposals to amend the Government Servant Conduct Rules; (d) the reports of the Public Service Commission—Bengal. I had the benefit of informal discussion with the Consul General of America who was very helpful, the Consul of France, one I.C.S. Judge of the High Court with experience of Enquiry into questions of corruption, the Director General of Enforcement and several others in the services with experience of administering Criminal Law in the profession of law. As I had to work in Honorary capacity and I had my own professional work to look to I could not devote my whole time to the work.

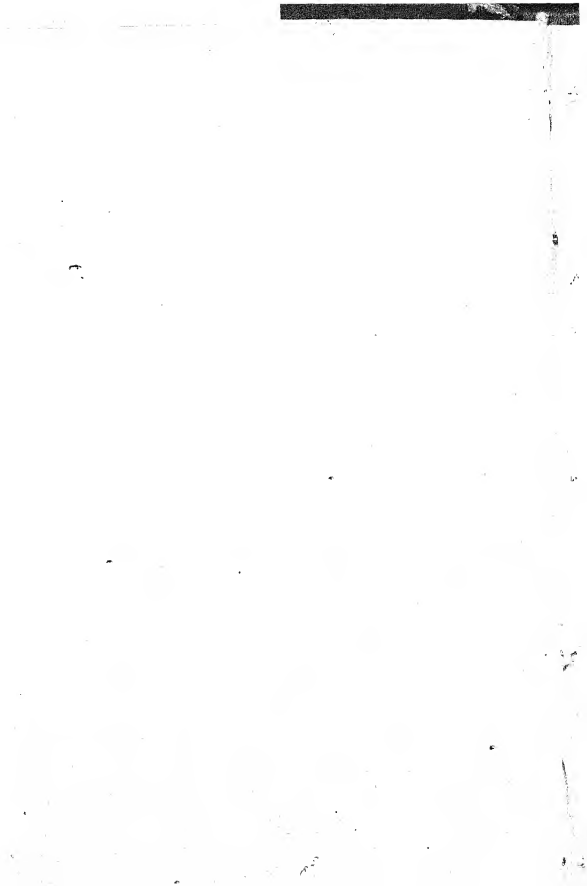
3. It is unfortunate that there is really no good Library nor any Institute at Calcutta which stocks books or reports on administrative matters in the diverse parts of the world nor keeps an intelligent and up-to-date information of the development in the various countries in Administrative Law and procedure.

Mr. Llewellyn, I. C. S. —the late Secretary of the Bengal Administration Committee—on being requested stated that even the books of reference mentioned in the District Administration Committee Report were brought from England and taken back. It takes a long time now to get books and reports from abroad and requisitions made through Consul General, America and Messrs. Thacker Spink & Co. to London could get little response. Personal contacts only with private individuals in foreign countries secured certain references and books.

4. In view of the fact that the matter was urgent and that it was essential that the broad outlines should be placed before the public on the basis of which the detailed work both of drafting rules and of the development of law could be taken up it was thought imperative that the report should be submitted quickly and it was done in November 1946. The red-tape proved, as always, a steriliser.

5. The present publication takes up, to start with, the points urged in that report with such additions and alterations as subsequent developments have made necessary. It is divided into three parts. The first part deals with the ways and the means for effecting an improvement in the procedure and in the results of departmental proceedings, the second part deals with changes in law for the trial of cases of corruption and the procedure

for the successful detection and prosecution when Criminal proceedings are decided on, and the third deals with the incidental improvements in the methods of work and in the attitude of the public servants to stamp out inefficiency and corruption in the administration and to improve the quality and the morale of the public servants. Once the general principles dealt with in each of these chapters are grasped by the Central and the Provincial Governments details will have to be worked on the basis of these principles. It is essential that the work in each Province and at the centre should be entrusted to officials who have the requisite experience, the necessary physical and the mental alertness, and the missionary zeal to work in national interests. The jaded, slow moving, career-seeking, individuals of myopic visions would be the worst type to be called upon to perform the task.



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CHAPTER I

DEPARTMENTAL PROCEEDINGS AND THEIR IMPROVEMENTS

1. The ways and the means for effecting an improvement in the procedure and in the results of the Departmental proceedings need very careful analysis.

The rules and the procedure for the guidance of the conduct of the Government servants and their classification and control are at present contained in:—

- (1) the Government Servants Conduct Rules issued and confirmed under Section 96B of the Government of India Act of 1919 corrected up to August 1944.
- (2) the Civil Services (Classification, Control and Appeal) Rules made by the Secretary of State for India in Council under Section 96B (2) of the Government of India Act, on the 27th May 1930 (corrected up to 1st September 1934).
- (3) Bengal Subordinate Services (Discipline and Appeal) Rule 1936 (issued by the Finance Department, Government of Bengal). (Similar rules exist for each Province).
- (4) Police Regulations—(Chapter XVII)
- (5) Board's Miscellaneous Rules. (For Bengal and other Provinces).
- (6) The Public Service Commission Regulations read with the Government of India Act of 1935.
- (7) Public Servants Enquiry Act (Act XXXVII of 1850).
- (8) The Criminal prosecution in cases of corruption is at present carried on as under
 - (a) Section 161, 162 of the Indian Penal Code.
 - (b) Ordinance XXIX of 1943.
 - (c) Act II of 1947 (India).

- (g) To these are added circulars and letters issued from time to time by the Appointment and the Finance Department of both India and Provincial Governments interpreting the procedure to be followed.

2. In dealing with details one finds among the Indian and Provincial Governments the activities of Government Departmental files of

- (a) individual cases,
- (b) discussion for amending rules and for examining principles :
- (c) report and references arising out of the comments of the Public Service Commissions.

3. An analysis of the Cases and the rules and the discussions of the problems show :—

- (a) that there is no consolidated collection of rules and instructions at one place to which an officer might turn for guidance in either initiating, conducting or concluding an enquiry. Any official who wants to deal with a situation is left in difficulties and to his own devices. Except instructions in the Police Regulations, and in brief in the Board's Miscellaneous Rules, which provide definite procedure there is nothing in the various rules to show who is to initiate an Enquiry, who is to ferret out evidence, or how the Enquiry is to be conducted and concluded or what official and officials are to take up enquiries and intervene where intervention is desired, and if so at whose instance, if suo moto, or how the Enquiry is to be started. It is essential to lay down definitely what must be the essential points on which conclusions must be

reached adversely to bring the charge home against the person concerned and at what stage or in which particular form the official accused is to be informed and what facilities he must be given to prepare for his defence.

The nature of the assistance for the defence that is permissible to the official charged is also not free from doubts. This leads to various difficulties later. As an example a reference may be made to the Federal Court Judgment in the case of Secretary of State *vs.* I. M. Lall (49 C.W.N. page 63) and the Lahore High Court decision in Venkata Rao *vs.* Secretary of State for India (Civil Appeal No. 12 of 1944, 41 C. W. N. page 544). The Bengal Subordinate Services (Discipline and Appeal) Rules of 1936 provide a schedule to indicate the designation of the post of the officer whose conduct is under enquiry, the authority empowered to appoint, the authorities empowered to impose penalties, and the nature of the penalties which they may impose, and the Appellate authority. The rules, however, do not show who is to start the Enquiries and whose are the responsibilities to start them and to take action for dereliction of duty or for dishonesty. But in the case of other services the entire procedure is left in a haze ;

- (b) that there is no clear indication to show the stages and the essentials of each stage of the procedure and the official or officials or class of officials who must come in and pass orders till the stage of passing final order is reached and after that an appeal, if any, is filed and recorded ;
- (c) It is not made clear—what could end only in “Enquiry” and what punishments, if any, could

be imposed after that stage, should the conclusion be against the official concerned.

As an example one may quote that there are seven types of punishments namely :—

- (1) Censure.
- (2) With-holding of increments or promotion, including stoppage of increment at an efficiency bar.
- (3) Reduction to a lower post or to a lower pay in the time scale.
- (4) Recovery from pay of the whole or any part of any pecuniary loss caused to the Government by negligence or breach of order.
- (5) Suspension.
- (6) Removal from the Civil Service of the Government which does not disqualify from future employment.
- (7) Dismissal from Civil Service of the Government which ordinarily disqualifies from future employment.

[Vide Rule 49 of the Civil Service (Classification, Control and Appeal) Rules]. But it is not clear about the following points :—

- (1) Whether the " Enquiry " stage or even analysis of a record of bad work could be sufficient to inflict the punishments under item (1), (2) and (4) and again ;
- (2) when and in what circumstances the enquiry should develop into " Proceedings " and when the proceedings could end, if it was desired that they should end, in a " trial " before a Criminal Court ;
- (d) the circumstances in which, and the officials and the machinery which must initiate, collect evidence, and be responsible for presentation of the whole case for a successful prosecution ;

- (e) that there is a lack of a definite system to see that the whole process is *expeditiously* concluded ;
- (f) that the Government Servant Conduct Rules and other rules referred to in Para 1 are out of date and have not been examined in the light of the changed conditions of to-day and amended accordingly.

4. The result has been that in spite of an all round recognition that there has been deterioration in efficiency, and that corruption is not infrequent, the number of cases in which action has been taken, has been extremely few and even in these few not always finally successful.

In a number of cases it was observed, that when they reached the final authorities, defects in the procedure barred the way of decisive orders being passed while the long time that had elapsed between the initiation and the final stage made further attempts to collect evidence and cure the defects futile. The cases, in consequence, were reluctantly dropped and the authorities concerned could do nothing.

5. The essential remedies seem to be:—

Firstly, to examine all the existing Orders and Rules referred to in Para 1 of the report on the background of the present day conditions and bring them up-to-date in exact and precise terms.

Secondly, to eliminate vagueness in the Rules and to prune out the unnecessary repetitions and duplications and to vest the authority to issue orders and amend them by one Central Authority.

Thirdly, to put all the revised rules and orders applicable to all the officers and to particular types of officer under one compilation as a "Manual of Conduct and Control of Government (or Public) servants."

There should be embodied in the Manual clear instructions on the entire procedure with definite orders and responsibilities fixed for each stage.

Fourthly, all future instructions should be issued as "Corrections" or "additions" to the rules in the Manual and not as unconnected separate items which are difficult to trace and keep accounts of — unable to be discovered in time of need.

Fifthly, to set up at once an Organisation (a) to carry out the above directions or such of them as the Government may approve and (b) to initiate, watch, expedite action for dereliction of duty and against corruption from the start to a final close.

It should be an essential part of the instructions that a definite time limit should be fixed within which final action must be taken and responsibility fixed for delay.

6. Elimination—Bengal Board's Miscellaneous Rules Chapter IV should be expunged. There is no need for separate provision when a Self-Contained Manual is got ready. The file shows that the necessity arose as no definite rules were published by the Government. Each Province similarly should eliminate duplications.

The procedure in the Bengal Police Regulations Chapter XVII should be recast on the lines of the Revised Manual. Each Province should take up similar lines of action.

All the Circulars and instructions issued should be examined, pruned when necessary, consolidated, and embodied in the appropriate places of the Manual.

7. In amending the Police Regulations and in reshaping the Circulars etc. certain basic concepts and rules of procedure must be standardised. The rules drawn up by different authorities have a tendency to create contradiction and confusion.

As an example I would cite the following instances :—

The Bengal Police Regulations lay down : " No Major Punishment shall be awarded to a Police Officer until proceedings, as prescribed hereinafter, have been drawn up against him " (Rule 556).

Punishments are divided into major and minor. Major punishments include dismissal, removal from service, reduction, deprivation of approved service increments, removal from any office of distinction or special emolument and award of black marks. Minor punishments include Warning, Censures etc. (Rule 858).

While Rule 49 of the Civil Services (Classification, Control and Appeal) Rules, lays down the following categories of punishments :—

- (1) Censure.
- (2) With-holding of increments or promotion, including stoppage at an efficiency Bar.
- (3) Reduction to a lower post or time-scale or to a lower stage in a time-scale.
- (4) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.
- (5) Suspension.
- (6) Removal from Civil Service of the Government which does not disqualify from future employment.
- (7) Dismissal from the Civil Service of the Government which ordinarily disqualifies from future employment.

Rule 55 of the said rules lays down that no order of dismissal, removal or reduction shall be passed on a member of a service (other than an order based on facts which had led to his conviction in a Criminal Court) unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate

opportunity of defending himself. It will be clear that the definitions of "Major" and "Minor" offences in the Police Regulations do not exactly fit in with the classification contemplated in Rule 49 and 55 of the Civil Services (Classification, Control and Appeal) Rules.

In para 215, the Bengal Administration Enquiry Committee (1944-45) has recorded the opinion: "We are strongly of the view that no increment should be granted to a Civil Servant whose service during the preceding year, has been deemed to be unsatisfactory and we do not think that the stoppage of an increment should be dependent on the institution of proceedings against the officer concerned." Rules 55 of the Civil Service Control and Appeal Rules leaves the position vague and this is the authority. It is clear that rules must be precise. Under the Police Regulation stoppage of increment is a major punishment which needs proceedings; while Rule 55 of Civil Service Rules does not contemplate that to be a major punishment and the Administration Committee considers that "no proceedings" are necessary. A new punishment such as entering of a black mark, should be classed under one of the major categories in the Police Regulation. Once these categories are defined and expressed in the Manual subsequent reference in other places must follow and maintain them with explanations for any local variation approved of by the Central Authority. It should then be determined which of the categories of punishments should be inflicted after the "Enquiry" stage and which will need "proceedings" and what particular processes should cover the one or the other. The Civil Service Control and Appeal Rules—which are the authoritative pronouncements—must be made very clear and unambiguous on these points.

8. The Government Servants Conduct Rules—the

basis of the Government servants' conduct is the set of rules issued by the Government. It will be discussed later whether it should be a compilation of Public Servants Conduct Rules so as to be applicable to all public servants whether appointed by the Government or the Local bodies. The alternative would be to leave it as the compilation of "Government Servants Conduct Rules" and then by special provision to apply them to the servants of all Self-Governing Local bodies run with the Tax-payer's money. In view of the position of Self-Governing bodies it seems in national interest that the Conduct Rules for the Staff throughout the Self-Governing bodies should be standardised. The present rules in Bengal (issued as corrected up to 1941), as they stand, have the authority of Section 96 B of the Government of India Act of 1919. They were corrected and re-issued in August 1944 but there have been no fundamental changes in them and they have continued from a time much prior to even 1919.

It must be evident that these rules need very thorough recasting so as to incorporate some fundamental criteria which the altered conditions of the country resulting from the constitutional changes have made imperative. The details need be worked out. But the work was put off as the Provincial Government thought that the revision should follow the revision of rules that the Government of India would lay down for its officers, and the Government of India waited for Rules to be framed by the Secretary of State for India for those who, at the time, owed their appointment to him.

9. The Government of India apparently decided that as the rules they might frame now would be liable to be superseded when Part III of the Government of India Act of 1935 would be brought under operation the existing

rules confirmed under Section 96B of the Government of India Act of 1919 should continue under the provision of Section 276 of the Government of India Act of 1935 till replaced by New Rules to be framed under Section 241(2) (a) (b) of the latter. Secondly, the Secretary of State was expected to revise the rules for the Conduct of Officers appointed by the Secretary of State under the Act of 1935. These for some reason or other the Secretary of State has not framed so far. The Government of India apparently missed the model and so did the Provincial Governments in turn. Thirteen years have elapsed since 1935.

The position is extremely unsatisfactory. Unless the standard of conduct expected of the Government servants is laid down with a meticulous precision, dereliction can hardly be decided. Without that decision on dereliction punishments cannot be awarded with exactitude or at all.

As in the new constitutional changes the power of the Secretary of State disappears, and the officers appointed already and serving in the various services will continue under new Constitution, Rules—clear and specific—must be formulated by the New Government of India or the Provinces concerned. The New Government of India will presumably be free to frame its own conditions and the Provincial Governments will take them as models, even when free to frame their own rules. If the above assumption be correct some officers under previous Contract with Secretary of State Service can be provided for by Special Rules. The rest, but for the exceptions, pass under the control of Indian Central or Provincial Government. It must be obvious, therefore, that the Governments should immediately start drafting their own rules for the conduct of Government Servants. The Government of India should start on its own too and by the time the rules

are framed each will have the advantage of examining the rules contemplated by the other and after analysis put them in the final form in each sphere.

This procedure will have the advantage of each Government applying its own mind and thus avoiding simple imitation of rules framed by one set of people with all their limitations and of finally framing something more realistic and comprehensive than the present system can ensure. It cannot be too strongly impressed that the framing of the rules in complete and precise forms to guide the conduct of Government Servants is the essential first step to ensure efficiency and to put down dereliction of duty and corruption and as such the work should be taken up at once.

RULES MUST BE CLEAR AND COMPREHENSIVE

10. The New Rules must be made clear and precise which no quibbling can raise debates on. When a definition is difficult, examples should make these clear. They should also, subject to circumstances of exceptional character demanding immediate action, lay down that in all doubtful cases the immediate responsible authority must give advice in writing. Strict rules are necessary for auditing the accounts and for the conditions for Government servants participating in the raising of funds for any purpose whatsoever. The activities must be very carefully regulated. The rules about lending and borrowing must be more precise and benami transactions provided against. The Government servants must in future live under conditions which can permit a clear inspection of their accounts of stock by specially deputed Inspecting Officers in confidence and must be bound to make a full and clear statement of their assets and their liabilities which should be capable of verification. The present

rules about declaration of immovable property and their operation are useless and abortive. The recent rules issued by the Provincial Government hardly go beyond repeating the old rules. The rules should be recast. They should provide for a precise declaration at the commencement of service to show what the Government servant starts with. They should show any subsequent inheritance and acquisition with details. There should be provisions for periodical verification. It is worth considering whether in the case of immovable properties situated outside Calcutta a register with details should also be kept at the Headquarters of the district where verification of a certain percentage might be easy. The Collector should report at once if any other property of the officer is discovered. Here too benami must be clearly provided against and if a wife brings inheritance or has an independent source of income, the Government servants should be bound to obtain details from her and submit clear accounts with dismissal as penalty for failure.

Any one entering the Public Services must definitely abjure the ambition of "getting rich quick" and should abide by specific rules against gambling (including playing bridge on wager), race-betting, share speculating. The term "speculating" needs very careful elaboration. It is not unusual in Calcutta offices to find well paid Government servants in continuous touch with share market to which are devoted not their off-hours after office but their office hours for which they draw pay from the Public tax-payers, using office phones. The perpetual excitements make them unfit to discharge public duties and pay attention to them. Though investments may be permitted, transactions which form part of daily or even hourly activities must be stopped during the active period of an officer's service. Rules should be clear and specific. Two

other forms of investments should be over-board and specifically accounted. Investments in ornaments, personal trinkets and bullions must be accounted for and a periodical list should be submitted. It should be further made a rule that, like lending and borrowing, no officer should have any personal dealings by sale or purchase with any one directly or indirectly connected with the sale and purchase of any article connected with the office the officer holds for the time being. For example, an Engineer in Government service connected with distribution of any contract should be debarred from sale to and purchase of any material for personal use from any person connected directly or indirectly with any firm having anything to do with such contracts. An officer having duties to purchase for official purpose stores or stationery should similarly be debarred from making any sale to or purchase from any person having directly or indirectly anything to do with any contract for supply of article for personal use. An opinion has been expressed that "Government servants should keep accounts of their private affairs including Banking accounts which should be liable to inspection at regular intervals or on notice" (speech of Mr. G. D. Gladding, I.C.S. (retd) in the Bengal Legislative Assembly). This should be incorporated.

Rule 14 provides for certain limitation, on Government pleaders and Crown Prosecutors. It is probably worthwhile to make it clear that Government pleader and Crown Prosecutors are expected not to charge fees from clients for participating in discussion with officials or realising fees or subscriptions for entertainment of officials. They occupy certain quasi-official position of trust and responsibility and their contacts with officials should always be over board in their interests as well as in the interests of the officials who have to contact them.

Rule 15 provides for Government servants being permitted to be Honorary Secretaries to a Club under certain conditions. That he could hold that Honorary post only on condition that he was not to take any part in soliciting for funds for the club would be an improvement. Not only the Honorary position is apt to be misused but also the position is misinterpreted by the public. The communication of the contents of official documents and information needs a completely altered rule. The extent to which official documents or information could be shown to people who come in with certain hall marks, of democratic authority, for example as an understudy of the Ministers or as a member of Legislature should be clearly defined. In these matters the limits of the use the Ministers can make of information in office files should be definite and laid down in the rules. Similarly the rules regarding Government Servants *vis a vis* Political movements and public election should be definite and clear and the consequences of breach of such rules should be unequivocal and deterrent. A summary of Sir John Anderson's address at the Rotary Club on 10th August 1937 (circulated to Commissioners of Division with Bengal Home Department letter No. 1828 (5)A of 5th May, 1945) could well be incorporated in the Rules for the guidance of the conduct of the permanent Government Servants.

There have been cases of Government Servants being used for political election and there have been allegations of Government Servants participation in such election. In the light of events the present Rule 23 must be held to be inadequate. It should be recast and made more stringent. Any Government Servant participating in or interfering with free election should be liable to any punishment up to dismissal. In view of the position of officials in the country-side and the importance of

unfettered development of representative institutions in this country it is essential that the officials should rigorously confine themselves to the status of neutrals efficiently watching to ensure a free election according to rules and the laws in force. The reasons why the members of the Civil Services should keep aloof from participation, except as officials, in Elections were discussed by the Royal Commission on the Civil Service in England in 1914 and the conclusions are worth quoting:—

ROYAL COMMISSION ON THE CIVIL SERVICE IN ENGLAND IN 1914—VIEWS OF CIVIL SERVICE AND POLITICAL ACTIVITIES

II. " Speaking generally we think that if restrictions on the political activities of Public Servants were withdrawn two results would probably follow. The Public might cease to believe, as we think they do now with reason, in the impartiality of the permanent Civil Service ; and the Ministers might cease to feel the well-merited confidence which they possess at present in the loyal and faithful support of their official subordinates ; indeed they might be led to scrutinise the utterances and writings of such subordinates and to select for position of confidence only those whose sentiments were known to be in political sympathy with their own. If this were so the system of recruitment by open competition would prove but a frail barrier against Ministerial patronage and the Civil Service would cease to be in fact an impartial non-political body capable of loyal service to all ministers and parties alike ; the change would soon affect the public estimation of the service and the result would be destructive of what undoubtedly is at present one of the greatest advantages of our administrative system and one of the most honourable traditions of our public life ". (page 97, Fourth Report

of the Commissioners). In India the efforts to create such traditions need to be ceaseless. The rules specifically provide for Government servants who are "in the Civil Service" of the Crown on India. Since these rules were just drafted there have been considerable changes in the constitution of the Government of India and of the Provinces. Men from public life with representative authority have come in and are at the apex of the Administrative system and will be more and more at the apex of affairs. In the existing rules there had been certain references to exception from a particular rule of the Members of the Imperial and the Provincial "Executive Council." The rules lay down nothing about the Ministers. It is almost a truism to assert that the future tone, the temper, and the morale of the administrative services will depend very largely upon the character, the ideals, the principles, in short on the mental, moral and administrative stature of the Ministers who have to create traditions of standards of character and of a sense of responsibility and of efficiency. It is worth considering whether it is desirable to put down anything regarding the Ministers. But whether it is essential to put down anything to indicate the standard of character and principles to be observed by public men selected as people's representatives to control administration in the context here may be left open but the importance of enunciating the principles somewhere and by some one in authority such as the Chief Minister can hardly be over-rated when so much depends upon the correct conventions in this respect being built up.

12. These rules revised and brought up to date should form the first step in any scheme for better administration and for providing the standard of conduct expected. They are essential to check dereliction of duty. Their revision,

therefore, should be immediately taken up by the Provincial Government and by the Government of India. It should be specifically made clear that the rules embodied are the inseparable conditions of entry into the Public Services and any deviation will entail punishments as will be determined under Civil Services (the Classification, Control and Appeal) Rules.

CIVIL SERVICE (CLASSIFICATION, CONTROL, AND APPEAL) RULES

13. The Civil Service (Classification, Control and Appeal) Rules now in use were made by the Secretary of State for India in Council under Section 96(B) of the Government of India Act of 1919 on 27th May 1930 and they were corrected up to 1st September 1934 when printed. Some corrections have been made since then.

They are out of date. They do not embody specific rules on a number of points which the working of these rules for these years has shown. These should be recast. As in the case of the Government Servants Conduct Rules the revision has waited for the action by the Secretary of State. It is time that the revision be immediately undertaken by the Government of India and the Provincial Governments. The Provincial Governments are expected to have full autonomy in the matter and will be the authority to draw them up independently. The Central Government may lay down Standards.

14. Rule 49 of the Civil Service (Classification, Control etc.) Rules provided for seven types of punishments. It has been observed above that the punishments in the Police Regulations do not exactly fit in with the classifications mentioned here and must be amended.

Rule 55 lays down that "without prejudice to the provisions of the Public Servants Enquiry Act of 1850 no order of dismissal, removal or reduction shall be passed on a member of a service (other than on order based on facts which had led to his conviction in a Criminal Court) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded opportunity to defend himself". The Rule provides that the grounds on which action is proposed should be reduced to the form of definite charges. The person shall be required to put in a written statement within a reasonable time and if he desires shall be heard in person and permitted to produce witnesses in defence and cross-examine witnesses. The rule states that the "proceeding", shall contain a sufficient record of the evidence and a statement of the finding and the grounds thereof.

Rule 56 provides that except members of subordinate services (separately dealt with under rules governing them) any person of the All-India Services, and specialist services can file appeal against orders imposing on him "any of the penalties specified in Rule 49".

Section 266(3) (c) of the Government of India Act of 1935 lays down that subject to regulations made by the Government of India or the Provincial Government the Public Service Commission "shall be consulted on *all disciplinary matters* affecting a person, serving His Majesty in a Civil capacity in India including memorials or petitions relating to such matters".

Rule 52(b) of the Bengal Public Service Commission Regulations of 1937 exempts Provincial Government from reference to the Public Service Commission in the matter of subordinate service only when the disciplinary action refers to (1) formal censure, (2) withholding of an increment or promotion including stoppage at an efficiency

Bar and (3) suspension pending investigation and of the *Provincial Service only in the last type of cases.*

15. It is evident that except in certain types of cases for officers of the subordinate services and for suspension pending investigation in case of members of the Provincial Services all disciplinary cases proposing any of the punishments enumerated in Rule 49 of the Civil Service (Classification, Control and Appeal) Rules must go to the Public Service Commission for opinion, before orders are framed. The Public Service Commission, Bengal, has insisted upon a complete record of evidence, has insisted on the officer being called upon to explain the charges as well as to make submissions against contemplated type of punishment all of which must be communicated to the officer and the replies are to be submitted to the Commission along with other papers. It has further insisted that the specific action contemplated to be taken with the nature of punishment contemplated to be imposed should be stated in the reference to the Commission. It follows, therefore, that Rule 55 of Civil Service Classification and Control Rules in the matter of procedure as interpreted by the Public Service Commission and contemplated in Section 266(3) (c) requires that "proceedings must be drawn up and all the details gone into for *all* types of punishments in Rule 49. But Rule 55 of the Civil Service (Control and Appeal) Rules seem to restrict them to *only* the more grievous of cases demanding severe punishment. The position is undoubtedly vague and a clear interpretation is difficult but very necessary.

16. The position thus is not satisfactory. I would suggest that Rule 55 of the Civil Service (Classification, Control and Appeal) Rules may be amended so as to provide for detailed proceedings only when the punishments

contemplated are dismissal, removal or a reduction. But when the punishments contemplated are censure, withholding of increments or promotion, including stoppage at an efficiency Bar, summary proceedings with a brief record will be sufficient. For suspension pending the result of investigation, no proceedings are necessary. A report for an order by the Chief Secretary in such a case for members of all services except those of the subordinate services should suffice. In case of subordinate services the Head of the Department concerned will be competent to pass the order of suspension.

From what has been stated above the position created by the rules seems to be that the recommendation of the Bengal District Administration Committee, para 215, that the stoppage of increment and the stoppage of crossing the "efficiency Bar" should not be dependent on drawing up of proceedings, and can be carried out if the rules are altered. It is desirable that the rules should be altered to prevent the increments being drawn merely as matters of routine without reference to the quality of work of the officers concerned. In this connection the opinion of the Royal Commission on the Civil Service of England—the fourth Report—seems sound and is worth quoting. It states—"Before dealing with promotion in the strict sense we desire to submit a few observations upon the existing rules governing increment of salary. Normally, in the non-graded classes the officer meets at certain points of his onward progress with "Efficiency Bar" i.e. he must obtain from the Head of Office a certificate that his competence, character, and diligence have been satisfactory before he can receive any further increments of pay. We have reasons to fear that these efficiency certificates are often treated as "formality" and are rarely withheld. We strongly recommend that in

future the treasury should take such steps as may be necessary to make these "efficiency Bar" real tests of competence and to secure that these certificates shall be withheld if the prescribed conditions are not fulfilled" (para 3, page 57).

A rule could be framed and embodied in the Civil Service (Classification, Control and Appeal) Rules that a short order declining to grant the certificate with grounds based on recorded remarks will be quite sufficient to stop one at the "Efficiency Bar" and meet the recommendation of the Bengal District Administration Committee" (para 215).

17. The necessity for clear instructions on the procedure was felt by different officers dealing with such cases. Even the Federal Public Service Commission drew the attention of the Government of India (No. F-108/35-S of 10th August, 1935) that "open disregard was shown for the essential provisions of the rules in question to an extent which no advisory body in the position of the Public Services Commission could possibly overlook. Apart from the fact that these provisions have been deliberately inserted for the protection of the members of services, the disregard of them provides an officer who has been punished with an almost irresistible case for reversal on appeal of any order passed against him. The Commission believe that it takes no more time or trouble to draw up proceedings regularly than it does to conduct them irregularly." The Commission had assumed that the Local Governments had issued detailed instruction so as to ensure that the procedure in departmental proceedings was in accordance with rules. But the assumption was not correct and the result of the letter was circulation of this again with the only direction that the rules

should be followed! No one looked into the question whether there was any definite procedure to give effect to the principles laid down in the Civil Service (Classification, Control and Appeal) Rules. This should now be done as it is long overdue :—

18. It should be made clear that any dereliction of duty and deviation of Conduct (the Revised Conduct Rules will be the guide) will be promptly enquired into by an officer of responsibility. The rules should lay down the official who should take the initiative. In the District for Gazetted Officers the responsibility could easily be thus laid down with such changes, if any, as the Chief Minister may determine :—

1. Collector. 2. District Judge. 3. District Superintendent of Police. 4. The Civil Surgeon in their respective spheres. So far as the first three are concerned a specially selected Gazetted Officer could be delegated the powers to start the Enquiry, ferret out the evidence, examine the witnesses and papers. Outside the District organization specific officers in each Department might be specifically given the responsibility. This list should be drawn up and published. The Enquiry should be expeditiously concluded and a report submitted to these respective Heads of the District Officers and of the Departments concerned. If the Enquiry makes out no case or a case for a minor offence the District Officers or the responsible officers should pass written orders accordingly either dropping the Enquiry or as discussed before an order for a minor punishment may be passed. If the Enquiry makes out a case of guilt there are three alternatives to be followed :—

- (1) Steps may be taken for criminal prosecution—
These will generally refer to cases of bribery, embezzlement and fabrication of official accounts.

Necessary steps must at once be taken to start the case and the procedure is dealt with in Part II of the Report.

- (2) An Enquiry under the Public Servants Enquiry Act of 1850 may be initiated or
- (3) Proceedings for departmental Enquiry may be started.

In case of suggestion for enquiry under the Public Servants Enquiry Act the report should forthwith go through the proper channel for the orders of the Chief Secretary. He might order a commission. In case of decision for holding departmental enquiry as has already been stated the nature of the charges will indicate whether detailed record or summary record should be necessary and the enquiry should be started at once. An intimation of the action taken, in the meantime, be immediately sent up direct to the Director of the Bureau of Public Services described later or an officer specially appointed for such duties. After the completion of the enquiry all the papers with the report should go to him as expeditiously as possible. A definite time limit should be placed for the submission of the report from the date of the initiation of the enquiry. The Head of the particular office should be held personally responsible for delay.

19. The provision of Law and Rules should be clearly explained.

The Public Servants (Enquiries) Act of 1850 is an Act for regulating enquiries into the behaviour of Public Servants "not removable from their appointments without the sanction of the Government" and further under Section 15 of the Act, "nothing in the Act should be construed to affect the authority of Government for suspending

and removing any public servant for any cause without an enquiry under the Act."

It follows, therefore, that checked against the seven types of punishments enumerated in Rule 49F Civil Service (Classification, Control and Appeal) Rules in the cases of five types this Act of 1850 is not to be resorted to. It is only to cases of contemplated removal or dismissal that the Act may be applied. It follows, again, that it is optional with the Government either to deal with these cases through a Commission under the Act of 1850 or by departmental proceedings. For the rest Rule 55 should apply (Civil Service Classification, Control and Appeal Rules).

COMPLIANCE WITH ESSENTIALS IN ENQUIRY AND PROCEEDINGS

20. It is imperative that the essentials of the rules should be complied with. Not only charges against the officer should be clearly specified and the officer be required to submit his explanation and his evidence but he should also be given chance to show cause as the judges of the Federal Court have held, against the punishment that is proposed to be inflicted. "In all cases where there is an enquiry and as a result thereof some authority definitely proposes dismissal or reduction in rank the person concerned shall be told in full, or in adequately summarised form, the results of that enquiry and the findings of the Enquiring Officer and be given an opportunity of showing cause with that information why he should not suffer the proposed dismissal or reduction of rank" (Secretary of State for India *vs.* L. M. Lall 49—C. W. N. F. R. page 76). The Privy Council has set aside this judgment but the problems raised are important.

The instructions should embody a chart of the stages through which the proceedings must be carried out and the essential steps to be taken and a record, for each stage, kept.

DEFENCE OF OFFICER'S CHARGED :—ADEQUACY

21. The question of defence of an officer charged is specifically provided for under Public Servants (enquiries) Act of 1850 when the enquiry is by a Commission under the said Act. Rule 55 of Civil Service (Classification, Control and Appeal) Rules lays down that all oral evidence shall be heard and the person charged shall be entitled to cross-examine the witnesses. The question arose from time to time as to whether a lawyer could be permitted to defend. The strict interpretation of Rule 55 precludes it. "In person" means "without counsel" (See Law Lexicon of British India by P. Ramnath Iyer—1940 Ed. page 565, see also Federal Law Journal Reports Vol. I 1937-38, Part II, page 16). Thus while the Public Servants (Enquires) Act of 1850 specially provides for lawyers being allowed to defend the officer charged before a commission, Rule 55 precluded the appointment of a lawyer in Departmental proceedings. There is, however, a question of principle involved. An officer, till he is found guilty at the conclusion of the proceeding, has a right to expect from his employer—which in this case has to be the "ideal" employer i.e. the State—every facilities for defence. In the Military, for example, in the Court Martial Trials the Military provides at its own cost for the defence and can permit, if circumstances justify, the accused's engaging, at his cost, a lawyer of his own in addition. The principle is accepted that the accused officer, till he is found guilty, is entitled to assistance from the employer for defence. All officers are not fit to make all proper

representation specially when he naturally is in difficulties. It is for consideration what arrangements if any can be done. I should think that when punishments other than prosecution, dismissal, removal or a reduction in rank are contemplated the officer is expected to defend himself in person. But where more severe punishments are contemplated, a senior officer of the service according to the accused's choice or a lawyer in more serious cases could be permitted. The final order should rest absolutely with the Chief Secretary on the merits of each case and he must be expected to use his discretion.

It is essential that every case is impartially considered. It is also of importance that the person charged should "feel that his case has been dealt with impartially." It was once suggested by the Federal Public Service Commission that it was desirable that an independent individual might be associated with the enquiry under Rule 55 of the Civil Service (Classification, Control and Appeal) Rules (Vide Home Secretary Mr. Thorne's letter No. 9/21/37 Est. of 29th July 1937.) The Government of India seems to have agreed to this principle but no action was taken. In the cases when the punishments contemplated are dismissal or removal from service or reduction in rank it is desirable that the enquiring officer should have the assistance of another individual—unconnected with the Department—whether an external individual or a Judicial Officer of certain standing accustomed to weigh evidence. In a situation where victimisation of officers is not altogether an impossibility and specially at this stage of evolution of ethics and principles it is essential to the security of the officials and thus to the morale of the services as a whole that the enquiry should not only be *thoroughly impartial in fact* but that the officer charged and the services *should feel* that it is so.

22. Certain principles such as (1) the definite authority of the Local Governments to appoint a Commission under the Public Servants (Enquiries) Act not only for officers appointed by them but also for officers appointed by superior authorities, final orders of punishments being passed by the latter for the members of the All India Services, (2) the conditions for compulsory retirement of officers whose continuance in the Public Services would not be conducive to Public interest, (3) the protection against dismissal or removal of Deputy Collectors appointed before 1914 without the sanction of the Governor-General should be embodied in the manual. It should also contain (as partly done in the case of Rules for the Subordinate Services) a chart to show the authorities in the different spheres who must initiate, hold enquiries, conduct proceeding, supervise the same and the authorities that must pass final orders as well as authorities that must hear appeals for the reasons already discussed.

23. From what has been stated above it is clear that the lack of definite rules setting down authorities responsible for proper supervision—and for the proper conducting of the proceedings—had been mainly responsible for the failure to stop dereliction of duty, to stop corruption and inefficiency. With India entering into a new era of constitutional development, and of constructive programme it is essential that everything possible should be done to perfect the machinery of administration for the proper execution of the schemes. No scheme, however well conceived, can operate unless the machinery that will operate it is efficient, honest and develops a living interest in the social services which the Administration in the manifold activities intends to render to the Social Organism. No efforts should be spared specially at this stage

of India's political evolution to make the machinery efficient, honest and effective.

I would suggest the creation, therefore, of a Bureau of Public Services or of Public Administration to be in charge of every aspect of administration which keeps the services after the recruitment of officers in a state of efficiency, honesty, and alertness and keeps their morale high.

24. The Bureau of Administration should be charged with the responsibility of developing all that is good in the officers and in the administrative machinery and in helping to weed out those who are unfit or found unworthy or to suggest the scrapping of a system that has outlived its utility or hampers the development of social effectiveness. Its functions should be :

A. For proceedings and prosecutions :—

- (1) to watch and control all enquiries, proceedings, and prosecutions against Public servants,
- (2) to employ agency, to ferret out evidence where necessary in such enquiries etc. either when asked for by the District or Departmental Heads or *suo moto*,
- (3) to conduct prosecutions, (where necessary proceedings) and for this purpose to select agents and train them ;
- (4) to secure the report of enquiring officers and submit it to the Public Service Commission after scrutiny ;
- (5) to submit the proceedings with the opinion of the Public Service Commission to the authorities concerned for final orders—a time limit is to be fixed for the period from the start to the close of the action taken ;
- (6) to watch the hearing of the appeals and submit the necessary papers or reports on the same ;

- (7) to see that the orders finally passed are duly executed ;

B. For administrative action :—

- (1) to keep the Manual of the conduct and control of Public Servants up-to-date ;
- (2) to take steps to remove the defects in the rules and the procedure found in actual working ;
- (3) to keep the lists of properties submitted by officers and conduct enquiries to verify their accuracy and to keep them up-to-date and correct them where necessary ;

C. For amelioration and improvement of the Services :—

- (1) to help to organise the Training of Officers ;
- (2) to help to develop an *esprit de corps* ;
- (3) to start office of Co-operative Societies and stores ;
- (4) to have a Bureau of advice and information for financial, educational and health problems of the officers and the members of the family ;
- (5) to be in touch with the services organizations of various services and with their views and ideas.

In England, an Organization and Methods Division has been started on the report of Mr. J. Reid Young who was put on special duty. This " Organization and Methods Division " for the main branch of the treasury had its functions suggested by the Advisory Panel. The functions in the main were intended to :—

- (1) Provide a pool of trained investigating staff, including specialists, for help to ministry, on a temporary or long term basis ;
- (2) Conduct investigations in Departments which have not set up Organisation and Methods sections ;
- (3) Conduct extra departmental or inter-departmental investigations ;

- (4) Undertake investigations of "Common Services" and circulate reports to departments generally;
- (5) Co-ordinate the activities of treasury organisation officers attached to ministries;
- (6) Maintain files of investigation reports etc., indexed by subject and department.

A faint copy of this was attempted to be introduced in the Bengal Secretariat. But, as for most things unfortunately in Bengal, there is a lack of integrated outlook, of zest in initiative, and of vigour. An enquiry will show how far the new venture has added anything except posts to the staff. If the Directorate suggested here is to develop possibly the Organization and Methods section sought to be worked in the Bengal Secretariat needs to be thoroughly recast.

25. The Bureau should be presided over by a Director who apart from the Ministerial staff should have a self-contained staff for (1) enquiry, (2) for conducting prosecutions. The Director should tour and inspect if occasions arise, get into touch with public opinion and should try to be aware of the trends of events and of movements which affect the Public Administrations.

The enquiry staff should be a picked body of men initially recruited from C. I. D. branch of Police, from the Enforcement Branch now in existence supplemented if necessary by probationers from educated youths from Universities or by fresh exchanges from C. I. D. The men should work definitely under the Director and sworn to secrecy. They should work in collaboration whenever necessary with other officials of police or of any other administrative branch. Each one of these would be provided with secret credentials signed and sealed. This is, I understand, more or less the system for recruitment

and work under the Federal Bureau of Investigation (F. B. I.) of America and of the State Police selected for confidential enquiry which has an established reputation. This system will have to adjust itself and develop according to circumstances of the country. Experts of certain types will have to be recruited too as exigencies arise. With transport facilities organised and commercial and industrial developments set in motion, India must be prepared to deal with a large scale and scientifically developed corruption system which will need equally competent and scientifically equipped detective and prosecuting system. The impact of large vested interests in commerce and industry on the public administration where much of the leadership will come from men rich in emotions, no doubt, and in some cases with record of sacrifices but with little or no experience of public administration will be disastrous for the country unless definite and stringent precautions are taken and the detecting and prosecuting agency is carefully organized.

So far as the prosecution is concerned the nature of prosecution will be largely technical. There has been a rapid deterioration in the quality and the integrity of the Bar. With exceptions even the Public Prosecutors or Government Pleaders hardly come up to the standard with which fifty years ago holders of such offices were definitely credited. It is not necessary to analyse the causes but it will be futile to ignore the fact. Cases of dishonesty and corruption may involve sums and personages against whom the most efficient and incorruptible machinery should be ready to act and operate. Four alternatives seem possible :

- Firstly—to have a set of whole time paid lawyers attached to the Bureau to go out for duty wherever required ;
- Secondly—to have a panel of prosecution lawyers

selected from practising lawyers and depute one according to the nature of the case ;

Thirdly—to train a small band of men already in the Judicial and the Executive Services of the State and to send them for work on deputation whenever needed ;

Fourthly—to have these trained officials from the Judicial and the Executive Services implemented by Deputy Legal Remembrancer, Standing Counsel, Advocate General or in exceptional cases by the briefing of an exceptional or outstanding lawyer if circumstances so demand.

The first does not appeal to me. The whole time paid prosecutors may do mechanically for routine prosecutions but they deteriorate rapidly in quality and in zest and probably in other essential moral attributes too.

The second alternative is a game of chance and is not a proof against temptations.

The third, with the fourth for more serious cases, seems to be the best.

It has the analogy of the organisation in the military where the entire legal aspect of a case is in the hands of Deputy Judge Advocate General, Assistant Judge Advocate General, Judge Advocate and prosecuting and defence officials. The merit of this system is that the whole work is in the hands of permanent officials who are as zealous to weed out the black sheep that injures the reputation and the honour of the services and as keen on creating a condence in the impartiality of prosecution which guards and strengthens the morale. This system also serves to secure secrecy which is so essential as the officials will not for expedition hang back and procrastinate for fees. In view of the fact that the officials from the Judicial and Executive Services will be in daily touch with adminis-

tration of justice they will be accustomed to weigh evidence and be up-to-date with legal procedure and interpretation. This system with some specialised training deserves consideration. There is the choice, in addition, of the elements in the alternative four.

26. The placing of the Bureau in the Administrative constitution of the country is of the utmost importance, if its full utility has to be reached by the State, and deserves consideration :—

The alternatives are :—

(1) to place it in the Method and Organisation Section of the Establishment Branch as recommended by the District Administration Committee (vide para 257 of the Report). It has already been discussed. This will certainly be an improvement on the present state of drift that prevails.

If, as stated, it should also be responsible for enquiry and prosecution, this Section must have to be organised along these directions. The organisation of the agency for enquiry and prosecution may be exclusively Provincial or it may have a Federal or Union aspect too. In the United States there is a Federal Bureau of investigation. It is controlled by a Director under the Department of Justice of the Federal Government. This Bureau mainly acts as a collaborating agent of the different State Organisations in crimes, spread over more than one State, and exclusively conducts investigation and prosecutes offenders against Federal Laws throughout the States. As one anticipates that with the development of large scale Industrial and Commercial organisations in India investigations and prosecutions may have to over-step Provincial limits it is

necessary to posit that the desirability of a Federal Bureau of Investigation is clear. That the necessity is there will be apparent from the appointment of an Intelligence Branch functioning under the directions of the Government of India and this necessity will continuously recur.

- (2) The second alternative is to have a Provincial Bureau to be aided by a Federal Bureau of investigation and prosecution. When party politics run high or when people to be proceeded against are high in the scale of Provincial Politics and administration it is extremely helpful if the State could get the services of an organisation far removed from local opinion and local influence. In the Dominion of India the Central Government is expected to standardise all aspects of administration and enlarge its functions. If it is to be enlarged the standardisation of the Public Services and their control (even if limited) in collaboration with the Provincial administration should be one of the additions. The building up of the Public Services has been one of the outstanding contributions of the 19th Century to India by the Indo-British administration. It has been observed by H. G. Wells that the Public Services constitute the nervous system of the State and provide the ultimate test of the strength of the State in every part of the world. A slight constitutional change with some confusion of ideal and infiltration of loose principles has already resulted in a deplorable set back—almost a land-slide—in the morale of the Public Services in India. A healthy evolution of India should not be jeopardised by the weakening of the standard of morals and ideals among the Public Services. If the idea be accepted a Union

organisation for the control of the Public Services may be evolved. A Union Bureau of Public Administration with a Union Corps of Officers for investigation and prosecution can be developed to aid, in collaboration with the Provincial Bureau of Public Administration, in enquiry and prosecution.

- (3) Finally, the alternative that could be suggested would be to amend the Regulation about the Public Service Commission with the Bureau of Public Administration being made a part of or adjunct to it with the Director as part of the Commission to discharge certain definite functions. The duties already referred to are really the duties of a Public Service Commission if it is to play its part more effectively. The conditions of India demand an effective control of the Public Services, by not only securing good recruits initially but in watching and directing the development of the Services in all their manifold aspects and in keeping them efficient and free from corruption. The development might be gradual as the exigencies may require but this development is essential. The Public Service Commission has been organised in different countries with different duties as the circumstances of each country demanded. In India the Public Service Commission should have its powers and spheres of activities enlarged so as to vest in it all the powers in connection with the recruitment, training, development, growth and control of Public Servants unfettered by any extraneous consideration.

27. So far as the ameliorative activities of the Bureau as discussed in para 24c are concerned nothing more need be said but this that the members of the services should receive all possible help in developing conditions which

could free them from anxieties and worries and enable them to devote their energies to the service of India and build up traditions which would be an example to all.

28. Summary :—

- (1) At present the rules and the instructions are inadequate, often vague and at times confused. They are scattered and not integrated into a complete whole.
- (2) The rules in Government Servants Conduct Rules, Civil Service (Classification, Control and Appeal) Rules etc. are out of date and must need to be radically revised to meet the changed conditions of the modern times and the requirements of the present day. These Rules and the instructions have continued unchanged for a long time in the expectation that the Secretary of State would issue revised rules first under the Government of India Act of 1920, and then under the Government of India Act of 1935 and the Provincial Government Rules will be altered accordingly. These expectations did not materialise while surrounding conditions materially changed first by the impact of political changes on the administration and secondly by the exceptional strain brought about by the conditions of war.
- (3) The remedies are :—
 - (a) To bring these rules up-to-date, consolidating the scattered rules and instructions, reconciling often contradictory instructions, deleting overlapping rules and making these rules clear and unambiguous.
 - (b) To build up a complete, coherent integrated procedure with sufficient details and instructions to which officers may turn for guidance ;

(c) To create an agency specially charged to see that action is taken according to rules and completed and that final orders are passed without delay and without errors.

(4) It is suggested :—

(a) that an up-to-date consolidated Manual for the Conduct and Control of Public Servants should be compiled without delay—the salient points where the existing rules need modification have been discussed (paras 5-23),

(b) that a Bureau of Public Administration should be organised with a Director at its head definitely charged with responsibilities to secure initiation of Enquiry, conducting of proceedings, and proper prosecution of cases when Criminal proceedings have to be started with staff of its own. The Bureau will be placed either under (1) the Method and Organisation Branch of the Chief Minister's Department revised and reshaped, (2) or act in collaboration with a Federal Bureau of Public Administration should the altered constitutional changes permit it; (3) or as part of Public Service Commission with the Regulations thereof altered to permit it. It is suggested that the Public Services Commission should be developed so as to enable it not merely to recruit but to guide, train, control and to keep up to the standard the Public Services of the Province. It is essential that the Bureau and its staff should work under conditions free from political or outside influences. The Bureau should have a body of staff trained and organised for detection and a staff for conducting proceedings when necessary and for prosecution in Criminal cases. If the detecting

staff could be organised on the Union Government basis (should the constitution permit it) in addition to Local or Provincial organisation it would be very helpful as in a rapidly developing country more than one Province may be involved in an organised crime of corruption and bribery, and in cases when it is essential owing to the position of the persons charged or to the nature of the crime that all local influences should be eliminated. If either of the first two previous alternatives be not possible the most effective step is to place the Bureau as a part of and adjunct to the Public Services Commission of the Province by amending the Public Services Regulations (pages 24-27).

CHAPTER II

SUGGESTED CHANGES IN LAW AND THE LEGAL PROCEDURE

1. It is essential to look into the existing law of the country to find out if it is adequate to meet the problems that have arisen and to protect the society against the effect of corruption in the administration. The present law is contained in the Indian Penal Code and the relevant chapter is Chapter IX.

That the present law has failed to protect the society from the effect of corruption in the Public Services is proved by the admission that there is a wide prevalence of corruption. The detections and the prosecutions have been few. That some of the cases detected are of officers of a status where such crimes were the least expected proves the seriousness and extent to which corruption has spread and the futility of the existing law and machinery. It is neither fair nor correct to be content with the self-satisfying assumption that corruption is confined only to sections of small salaried individuals. Mr. R. G. Casey, late Governor of Bengal in his broadcast speech of 10th January 1944, stated, "It is common knowledge that there is a *good deal of corruption* in Bengal and together with the great mass of decent people in Bengal I very greatly deplore it." During the Bengal Famine of 1943 corruption in the Public Services and administration was the subject of caustic comments. The Bengal District Administration Committee in para 227 of their report stated "*so wide-spread has corruption become and so defeatist is the attitude taken towards it that we think that the most drastic steps should be taken to stamp out the*

evil which has corrupted the public service and public morals''. The National Leaders talk of the prevalence of corruption and the need for its eradication in no uncertain terms. If the corruption is so rampant and detection so few while the ultimate prosecution is fewer still then one is forced to come to the inevitable conclusion that there is something radically wrong in the system. Either its law code is ineffective or inoperative, or its superior officers are not interested in maintaining integrity in administration or its detecting agency is incompetent and corrupt. Any or some or all these contribute to the existence of corruption to the detriment of the social organism. Corruption in administration will wreck any constitution however meticulously perfected in theory and no state can be run where corruption is widespread and goes undetected and unpunished. Moreover once it is allowed to spread its tentacles deep and is permitted to go unchecked it infects, like cancer, every tissue of the administration and its eradication becomes well nigh impossible or is at least a long process. If one looks up the history of administration of England and India from the days of Lord North in the former and of Clive and Warren Hastings in the latter, one will find the deplorable state of public and private morals in the beginning of the 19th Century and the end of the 18th Century in both England and India. But public opinion and strenuous work of devoted workers in England—of men like Benjamin Jowitt, Sir Stafford Northcote and others acting conjointly with ministers of progressive ideals and of developed standards of morality and ethics, paved the way for rapid and steady improvement in the Public Services and in the standard of morals of public men in power and of public servants generally. In India as well far-sighted statesmen worked steadily from the days of East India Company to improve the standard and morale of the

Public Services till at the end of the 19th Century one could say that subject to the inevitable limits on efficiency in foreign rule in the Imperial, in the Provincial and in large sections of Subordinate services the standard was high and could stand comparison with that of any country. No more salt "Darogas", or "Munshis", such as of Clive and of Warren Hastings, left legacies to which could be traced the origin of the bulk of the so-called aristocracy that struts about and round this country even to day. This integrity reached its height at the close of 19th Century and continued for the first decade of the 20th Century when the first world war gave visible cracks to the structure. The end of the first world war saw extradition warrant issued against a British Head of a Government Department with authority to enter into contracts for stores. It saw men high in the military in charge of purchase court-martialled, and at least one European member of the Viceroy's Executive Council had to resign. The Karnani Bank cases created sensations. The general civil administration was largely unaffected though one could perceive at places a lowering of standard. Many rumours were abroad with confidence of the people shaken and not without reason. The period between 1920-1937 brought the first political changes to the constitution and brought on public men to take charge of administration with largely transferred powers in the Provincial spheres. Men entered legislatures through diverse electorates without any back-ground of traditions and often with little education. The administration developed shaky ideals. The political changes of 1937 brought in new ideas of appointments. Communal representation in services and a system of political patronage were introduced in which a member of the legislature assumed that he had a right to interfere in the day to day administration of the country and in as

much as he had a direct access to the Minister in Charge of a Department the officials must be under his thumb while important largesses are in his hands. The morale of the services got a rude shock and there was a confusion in the ideals and in the standard of Public services which no longer could hold out hopes for security of tenure, or for success in official careers on the judicious appraisalment of merits. The net result was that the better type of public servants lived in sterilised inactivity, while the more unscrupulous took to daring adventure. They ingratiated themselves directly on the powers that were and thought that they were free to make hay when the sun shone. An Assistant Secretary attached to a minister with not very correct standard of morals—and victim to the weaknesses of flesh and to alcoholic drinks could easily make himself the *de facto* minister and pandering to all that the minister craved for could be the centre to which all in the Department would gravitate in search of appointments, promotions and favours. The weaker the case the stronger must be the efforts and more tempting the means to win his support. I am citing no hypothetical case. With the undeveloped educational, moral and financial background of many people placed in power and authority and with large patronage and funds in their hands for distribution, the interests of the people at large are to be protected by something more radical than any superficial remedies. A deeper knowledge of the pathology of the conditions must be developed and true remedies must be discovered and rigidly applied. The devastating War No. II with its inevitable Defence of India Rules with controls, requisitions, denial policies, necessitated appointments of swarms of men of unknown merits, unknown traditions or no experiences of dealing with the life and properties of men. This intensified

the confusion but it will be a mistake to suppose that the corruption and mal-administration were confined only to the spheres relating to war or only to these men connected therewith. It is a still greater mistake to suppose that corruption will disappear by itself with the end of war and war measures. The permanent staff on deputation to exercise the uncontrolled and almost unlimited powers, as well as those left in the general administration, have largely been infected with the spirit of the time. The very atmosphere is vitiated. With this vitiated atmosphere India gets her political independence.

2. The remedies so far suggested may be examined. The District Administration Committee in para 228 has suggested certain administrative remedies—the efficacy of which will be discussed in Part III of the report. The legal remedies suggested in para 229 are as follows :—

- (1) the offences under S. 161 and 165 of the Indian Penal Code should be made cognizable ;
- (2) that section 162 of the Criminal Procedure Code should be amended to provide that statements made to a Police Officer in the course of an investigation into a case of bribery shall be available for use as evidence ;
- (3) that the Law should be amended on the lines of the United Kingdom Prevention of Corruption Act, 1906. This act provides that where any money, gift or other consideration has been paid or given to any person in the employment of His Majesty or any Government Department by any person or agent of a person holding or seeking to obtain a contract the money gift or consideration shall be deemed to have been paid or given or received corruptly unless the contrary

is proved. In brief this means that if money etc. has passed between a public servant and a member of the public with whom he is in official relations the onus of proof that the gift was innocent lies upon the officer and the receiver of the gift. In many cases it could be shown that money has passed between a member of the public and a public servant but that it was difficult to obtain proof that the money had been offered corruptly ;

- (4) that a new offence should be created providing that if a public servant or his dependants are known to have become possessed of a sudden accretion of wealth the Public servant concerned would be deemed guilty of the offence unless he could prove that the accretion of wealth was innocently obtained. This is, of course, a wide extension of the provisions of Sec. 9 (1) of ordinance 29 of 1943. Such offences might well be tried by a Tribunal on the lines of that set up under the Ordinance mentioned.

3. It has been suggested against the proposal that if Section 161 and 165 I-P.C. be made cognizable the public servants may be victimised and that may affect the morale of the public services. Attempt at victimisation, political and otherwise, is not altogether an improbability. When one remembers the long drawn controversy in England against the appointment of a Director of Public Prosecution lest it might be misused for political purposes till the appointment was sanctioned in comparatively recent times one can sympathise with the objections. It is to meet such objections that under Section 2 of the Better Prevention of Corruption Act of 1906 in England it has been laid down that a prosecution for an offence under the Act *shall not be instituted without the consent of*

the Attorney-General in England. It is considered to be a salutary provision. But the circumstances at the present time here radically differ. It must be concluded from the prevalence of corruption and its rapidly developing tendencies coupled with a paucity or rather a rarity of detection that in the present administrative mechanism somehow no one is able to stop corruption. No one takes active steps. The administration is confronted with a serious and rapidly developing menace. The District Administration Committee is correct in the statement: "Evidence has been tendered to us that, at present, officers in authority are little disposed to pursue *prima facie* cases for investigation". (Para 228 (3).) I can add my testimony to the fact that officers in authority apparently feel that already there are enough of the evils and there is no use adding further evils. The impression left on the public mind is that the Government knows of the widespread system of corruption but the authorities are not interested in stopping it for reasons best known to them. All these must stop and the machinery for taking action in cases of bribery must be revised and re-invigorated. This can only be done by utilising promptly and actively the machinery that exists under such conditions so that victimisation of public servants would be avoided or at least minimised even if the risk be there. The Government of India Act II of 1947 (vide Appendix II) has attempted to alter the law. But I am sceptic about its efficacy. *Definite responsibility for the detection and the prosecution must be fixed on definite officers or departments.* I agree, therefore, that (i) Section 161 and 165 I.P.C. should be made cognizable. Sec 2 of Act II of 1947 has made the offences cognizable. But immediately the cognisance is taken and within 24 hours the departmental Head should be informed as well as the Director of the Bureau of Pub-

lic administration. Both these officers will have, if they thought fit, the authority with the sanction of the Chief Secretary to stop further investigation. It may be laid down that when the officer charged is a *Gazetted Officer* the investigating Police Officer must not be of rank below that of a Deputy Superintendent and preferably should be a Superintendant or an Assistant Superintendant of Police and in other cases not below the rank of an Inspector of Police. Secrecy and prompt action are essential to such cases and insistence on a previous approval will frustrate the object and thwart effective action. No prosecution could be started without the sanction of the Government where sanction under section 197 C.P.C. is required under the law and in every other case without the approval of the Head of the Department or the District Officer as the case may be. The whole investigation may also be taken over by the Director of the Bureau of Public Administration, when the Director of Bureau of Investigation so desired. These will operate against victimisation. It must be obvious that the other possible method is of reporting to the Magistrate for obtaining an order under Section 155 (2) C.P.C. and then for the Police to investigate. Sec. 3 of Act II of 1947 stipulates this in certain cases. It will be dilatory and the Police under these conditions will hardly be inclined to add to its work. The fact that applications under Section 155 (2) C.P.C. have been so exceptionally few so far, if any at all, proves that the method does not effectively work. When admittedly bribery is rampant this procedure is unsuited to meet the exigencies of the present situation. I may note that Section 3 of the Prevention of Corruption Act of 1906 of England requires that the information on which action is taken under that act must be on oath (which in India can only be administered by a Magistrate) and that the

previous sanction of the Attorney-General must be obtained before a prosecution is started. But it must be remembered that British Parliament was legislating for a normal situation with occasional aberration but Provinces and India are faced with a very abnormal situation today and for some years ahead at least, which threatens to bring the entire administration into disrepute and make it infructuous. Those who have any experience of the present day working of any scheme, with an appreciable fund at back its, knows that various devices operate through corruption to smuggle out the money and leave only a fraction of the allotment for the object itself which necessarily suffers heavily. The procedure laid down in Section 3 of Act II of 1947 will hardly meet the situation. It is essential that the enquiry should be prompt, confidential and what is more that definite responsibility should be attached to the particular Department and particular officers to take immediate initiative. Act II of 1947 has rightly made the offence cognizable. But the limitations placed by it will militate against effective initiation. The post war period with its large reconstruction schemes and controls and derequisition and resale of properties would operate for some time before normal conditions are restored, and would provide temptations. The corruption that has spread deep must be eliminated by vigorous steps now and at once if the administration and the people have to be saved. No arrest of a gazetted officer should be made, however, without the order of a Commissioner of a Division or in other Departments of a superior officer of corresponding rank. Thus with the direct supervision of the Director of the Bureau of Administration, with the provision that Police Officer above a certain rank must investigate into cases of bribery, where a Gazetted Officer is concerned and that no Gazetted Officer can be

arrested without an order of an officer not below the rank of a Commissioner, the chances of victimisation will be minimised for officers who carry out their duties honestly. Section 270 of the Government of India Act was a sufficient immunity and the New Constitution Act should provide the safeguards on similar terms.

The nature and amount of punishment should be modified in the existing moral standards prevailing. The punishment now provided, in my view, is wholly inadequate. For an offence under Section 161 I.-P.C. the imprisonment should be extended to seven years. The more serious cases may be sent up to the court of sessions.

All properties (movable or immovable) held to have been acquired through corrupt means should be confiscated to the State. The confiscation of property of person convicted is another problem that needs solution. It may need a little more elaboration in drafting. It is not exactly what is contemplated in Section 517 Cr. P.C. The amount of bribe on a particular occasion may be before the court or in custody whereas he definitely has an accumulation of a series of undetected cases, which must be confiscated. The convicted public servant should be defranchised and deprived of all rights to vote for such period as the circumstances may demand. All these should be carefully provided.

The punishments for the various offences should, in my view, be as under :—

Sec. 162—Seven years' imprisonments.

Sec. 163—As above.

Sec. 164—As above.

Sec. 165—Imprisonment should be rigorous and not simple.

Sec. 166—Imprisonment should be three years and rigorous.

Sec. 168—Rigorous imprisonment for three years.

Secs. 170 & 171—Rigorous imprisonment for three years.

Secs. 170 & 171—Rigorous imprisonment for three years.

The views expressed by the District Administration Committee that "So wide-spread is the corruption and so defeatist is the attitude taken towards it that the most drastic steps should be taken to stamp out the evil which has corrupted the public services and the public morals. Anything less is denial of justice to the poor people of the Province who comprise the bulk of its population and who in the end have to pay for the bribes which go to enrich the unscrupulous and the dishonest". (Para 227 of the Report). The situation could not have been better summed up.

- (2) Unless there is a special code evolved—a subject which will be discussed later on—the statement to a Police Officer which incriminates the accused cannot be made available as evidence merely by a change in Sec. 162 Cr.P.C. Sec. 4 and Sec. 5 (3) of Act II of 1947 provide for certain very necessary presumptions. But in my view they are not enough. There should be certain changes in the Law of Evidence as the security of the Society against dishonesty demands. Unless the statement comes under Section 27 of the Evidence Act the admissibility of such a statement to a Police Officer as referred to as evidence will run counter to the basic principles enunciated in Sections 25, 26 of the Evidence Act. It must be noted that after all these provisions in the Indian Evidence Act were enacted there have been considerable changes in the English Criminal Law. A statement to a

Police Officer now, in certain circumstances, has been permitted in English Law to be used as evidence and even the accused in certain circumstances has been permitted to be put to the witness box to be examined and cross-examined. If a self-contained Act is evolved there is no reason why, with certain safeguards, these principles cannot be embodied in the law. There is a risk of retraction by accused (and in cases of a witness proving hostile). Nonetheless in a difficult situation such as the proof of bribery creates it is worth attempting to piece together little aids to help the trying court in coming to a correct decision. A gazetted officer making a statement to a gazetted Police Officer can hardly be interpreted to have made it under duress. Sec. 7 of Act II of 1947 under certain conditions makes accused a competent witness but only for defence.

- (3) I do not find in Section 1 of the Prevention of Corruption Act of England of 1906 (34 of 4th August, 1906, 6 ed. 7) the principle the District Administration Committee reads into it. Unless there has been an Amendment of which no copy has reached India I am inclined to think that the principle is not there. The section specifically starts with "if any agent corruptly accepts or obtains from any persons" etc. Hence the knowledge that it is being secured corruptly is there before the receipt. But the principle suggested by the Committee is sound that if a gift or money is proved to have passed between a Public servant and an individual having concern with him in official capacity the onus of disproving that it was received with "Corrupt" motive must be on the recipient as the Principal and of the giver as an Abettor. The drafting will require some thoughts but it will not

be impossible to put the idea in legal form sufficiently clearly. Sec. 4 Act II of 1947 has made the attempt and to a large extent though not wholly meets the point.

- (4) The District Administration Committee's suggestion that a new offence should be created providing that, if a public servant or his dependants are known to have become possessed of sudden accretion of wealth the public servant concerned would be deemed guilty of the offence unless he could prove that the accretion of wealth was innocently obtained. This sudden accession of wealth must be outwardly known else this section will be inoperative. It will be inoperative if, for example, the ill-gotten wealth is converted into gold or silver bars or notes and kept concealed without any outsider getting a clue. People in the services given to dishonest ways wait till they retire for making any expenditure beyond their means. It is worth while considering whether "in active service or after retirement" should not be added after Public servant. In spite of the fact that it will be difficult to apply I agree that it should be made a separate offence and incorporated in the statute. People drawing less than a couple of hundred rupees in charge of some purchases are known to have sent sons to England for education and built houses at Calcutta at costs which people earning many times over the amount could not dream of doing. Sec. 5 of Act II of 1947 has made an attempt but lays no rule of evidence as to how "habitual" acceptance of gratification must be proved when each acceptance if proved is an offence and reputation of being a habitual bribe-taker is not permitted to go as evidence as in the cases under 110 Cr.P.C. People connected with

imposition and realisation of taxes or of concluding contracts for Government either for construction or for purchase—or entrusted with determining priority in the matter of transport live in a style or incur an expenditure which people with much higher income can ill afford to do. If corruption is to be stopped and the actual transaction at the time could not be detected, the liability for being tried for an "offence" based on a legitimate inference from conduct would often act as a deterrent. I should think therefore, that the suggestion should be accepted and the offence legally described should be embodied in the statute. I may note here that such inference was directed to be drawn in the past. In Emperor Akbar's Instruments of Instructions to officers in Merat-i Ahmadi we find the following instructions to the Kotwal. "The Kotwal should always keep himself informed about the income and the expenditure of every man because when a man spends in excess of his income it is certain that he is doing something wrong". (Sarkar's Moghal Administration, page 69).

5. The principle of the inference enjoined to be drawn from sudden accession of wealth and the admissibility of proof thereof as permitted by the provisions of Section 9 (1) of the ordinance 29 of 1943 is already incorporated in Sec. 5 (3) of Act II of 1947 (An Act for more effective prevention of bribery & corruption). It is the one important provision of law which has gone a great way to throw the onus of proof on the right person.

6. It must be realised that the detection in a case of bribery is difficult. The only technique developed so far is to lay a trap, inform officials, arrange a cover and pounce

upon the culprit and conduct search almost at the time or carry out a search immediately after. It is essential to develop the system by which circumstantial evidence could be made available with legal value attached. The widespread nature of the crime, the venality of it, the suffering it brings on the members of the public, and its disastrous effect on the administration and on public morals must convince any genuine well-wisher of the country that the society is up against a very serious menace. It has spread into local self-governing institutions, District Boards, Municipalities, Corporations and even to institutions dealing with education. Unless drastic steps are taken one of the most corroding social diseases will carry havoc in every aspect of the public administration. The greatest sufferer will be the masses and the taxpayers. A development scheme meant to irrigate a large area to fertilise the soil and supply food to hungry thousands is neutralised by the fact that the officials, the contractors, and suppliers between themselves smuggle away such a large share of the budgeted allotment that the work done actually is done with fourth rate materials and even that very indifferently. The large irrigation plans, road and railway projects with crores in estimates will mean only "Swaraj" for contractors and dishonest officials with little benefit to the hungry masses unless the public and the administration are fore-armed and fore-warned. This is so only because of a widespread system of bribes. The public feeling expressed through the press demands drastic measures. In a widely circulated Indian paper commenting on corruption in administration the following remarks were recorded :—

"Sir Douglas Gordon was himself a high responsible and experienced Police Officer. Need we tell him the reason why black-marketing and profiteering still thrive? Are not the remedies meant to cure these social vices to stamp

out corruption and bribery essentially defective? Are not the officials detailed to deal with these things hopelessly corrupt themselves? The authorities have so far proceeded generally against the small fry. But what about the big blood-suckers?" (Amrita Bazar Patrika).

If this indignation is genuine surely the people's representatives in the legislature cannot hesitate to adopt drastic measures to root out the evil. By strengthening the hands of the Court, by strengthening, improving and purifying the agents of detection and prosecution, by creating a public moral sense against corruption and enlisting the co-operation of the public and by careful division of the alternatives of prosecution and drawing up of Departmental proceedings a radical improvement can be brought about. It is time that immediate steps were be taken to bring about these changes.

7. The next question is whether all these corrections and amendments of the law in the Indian Penal Code, in the Criminal Procedure Code and in the Indian Evidence Act could be carried out in sufficient time to be useful to meet the situation and whether such corrections and amendments could be agreed to by the Local Legislatures concerned. The acts referred to are under the category of concurrent jurisdiction between the Central and the Provincial Government. It is desirable that these amendments should not be the subject matter of Provincial Legislatures. Firstly, because such an attempt on the part of one Province only will rather seem to suggest, what is not a fact, that the particular Province is the one province where special legislation has been found necessary and this is not fair to the Province. Secondly, there may be various Local vested interests which will attempt to oppose such legislation in the Provincial Legislatures. Statements of various

ministers and responsible persons from North Western Frontier Province to Behar go to show that corruption and bribery are not the special features of one province only. It is an All-India subject. Thirdly, the Central Legislature might take a more balanced and comprehensive view and will probably realise the responsibility of laying down certain principles of law for the entire country. If the legislature has any reason to believe that the permanent statutes need not be amended then a self-contained act for a period, say of ten years, may be passed to meet the urgent situation and a self-contained Act, which is urgent, evolved and passed. It can provide all the special rules of evidence and of procedures necessary to check the special type of cases that the social organism is confronted with at the present time. This procedure will probably meet all possible objections of people who do not want to be hustled and at the same time will obviate the necessity of amending a number of laws, yet suffice to deal with so pernicious and urgent an evil as corruption in the public Administration.

If the proposition be agreed to then a self-contained enactment laying down both the offences and the rules of procedure and of evidence might be evolved which can be put through with minimum delay and should meet little opposition. In the meantime Act II of 1947 has been passed. It bears marks of hurry and to any one with a deeper insight into the pathology of these crimes must appear too inadequate to prove effective. A further question may have to be discussed, and it is this, whether the trying courts should be the ordinary courts of law as they exist in the country to-day or a special type of Courts or Tribunals needs to be evolved. There has been a suggestion that a procedure more or less corresponding to *Droit Administratif* should be developed. Possibly the tendency in India would be to oppose the introduction *altogether* of new principles for trial. On the

question of *droit administratif* the Committee of Minister's powers which sat in England in 1932 discussed in details the question of the expediency of introducing such a system of administrative law. The Committee referred to an article by Professor Dicey entitled "The Development of Administrative law in England" in the Law Quarterly Review for April, 1915. Professor Dicey came to the conclusion that although modern legislation had conferred upon the Cabinet or upon the servants of the Crown, who might be influenced or guided by the Cabinet, a considerable amount of Judicial or Quasi-Judicial authority, the fact that ordinary Law Courts could deal with any actual and probable breach of the law by any servants of the Crown still preserved that rule of law which was fatal to the existence of true *droit administratif*. Before the said committee Professor W. A. Robson put detailed proposals for the establishment of a system of administrative courts and administrative law independently of the ministers as the best remedy for the defects of the existing system that he concluded existed in England. The committee came to the conclusion that a regularised system of administrative courts and administrative laws such as Mr. Robson proposed would involve the abolition of both the supervisory and appellate jurisdiction of the High Court, in matters pertaining to administration and would result in the withdrawal, to a great extent, of all those judicial activities which are inseparable from administration from the influence of public opinion. The Committee, therefore, advised against its adoption. In 1921 the whole position of the *Crown as litigant* was referred to by Lord Birkenhead (then Lord Chancellor) to a committee presided over by Sir Gordon (now Lord) Hewart. In 1924, before the committee were able to bring to a conclusion their necessarily prolonged enquiries Lord Haldane (then Lord Chancellor) requested

them to prepare a bill on the assumption that it was both desirable and feasible to remedy the defects in the existing law, as alleged to exist in England by some law authorities. The committee reported in 1927 and submitted a draft bill prepared by them in accordance with Lord Haldane's minute. (See para 110 to 112 of the Report of Committee on Minister's powers, 1932). This bill has not yet been made into law. If this be the state of affairs in England it is hardly likely that the Indian Central Legislature would agree to any Act which has the semblance of introducing a new departure in dispensing law and justice in the form of a *Droit Administratif*. It would be, I think, highly desirable that a law consistent with the present law and the procedure and the authorities of the Courts as they exist in this country to-day should be evolved. There is, and rightly, an appreciable amount of opposition in this country to the introduction of any law or procedure which in any way militates against the authority of the High Court, or the existing courts. There is a considerable amount of feeling also against special courts. If as suggested in Part I of the Report that the conducting of the enquiries and the prosecution will be done by a group of trained staff under the Director of the Bureau of Public Administration then specially selected competent Judges or Magistrates would be quite able to preside over a trial like this and dispense justice as well as could be desired.

The suggestions, therefore, are :—

- (a) to take up legislation in the Central Legislature ;
- (b) to attempt to embody the penal sections as well as the special rules and the procedure in a self-contained code ;
- (c) that the existing courts with specially experienced Magistrates and Judges to preside may be utilised ;
- (d) and if the legislature so desires, the law may, to start with, be limited to ten years at the end of which the

position may be reviewed and the extent of corruption then prevailing may determine the future course. In the Appendix to this Volume a criticism of the Anti-corruption Act (Act II of 1947) passed is given. The law passed is insufficient and will probably prove futile.

8. The District Administration Committee did not refer to and I am not sure whether the Government is aware of a special type of recent activities which lead to a good deal of corruption or helps to develop the tendency towards corruption. With the impact of the new democracy with the administrative machinery certain conventions have to be built up. It must be admitted that they have not been built up so far in this country. On the contrary very undesirable conventions have a tendency of being set up. The members of the Legislatures and their friends and relatives do not seem to have realised always that the administration has to be run on certain well-defined principles, and these principles must be strictly impartial and to the best interests of the social organism as a whole. The members of the Legislatures and their friends and relatives must have to realise that there is an opportunity for service and of serving the masses and not for twisting in any way the administrative machinery for any personal or selfish ends. There have been cases where members of Legislature either personally or through friends, relatives, or associations or companies, genuine or fictitious, have taken personal interest, not without reasons of gain, in securing contracts or in securing jobs. This particular type of offences against the social organism or state was not dealt with in the chapter of offences by Public Servants in the Indian Penal Code though sections 162 and 163 have references to a certain type of mild inter-

ference. The contingency had not arisen when the Act was made into law. I could find so far no legislative enactments in the English law on the point but I found that in the American Criminal Law this particular type of offences has been specifically dealt with and rigorous steps have been taken to legislate against their continuance. An agile and alert public opinion developed throughout the 19th century by genuine well wishers in England was probably a great guarantee. It is probable that in England the standard of education and of morals developed obviated the necessity for such legal provisions while a new state with men unused to responsibility coming to power as in U. S. the need was felt. It is essential in the existing stage of development of public morals in India to discuss the legal provisions on the subject in America. I refer, for example, to para 199 of the United States Criminal Code (Sec. 110), where it has been stated that "Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified and during his continuance in office, directly or indirectly, ask, accept, receive, or agree to receive, any money, property or other valuable consideration, or any promise, contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value to him or to any person with his consent, connivance, or concurrence, for his attention to, or services, or with the intent to have his action, vote, or decision influenced on any question, matter, cause, or proceeding, which may at any time be pending in either House of Congress or before any committee thereof, or which by law or under the Constitution may be brought before him in his official capacity, or in his place as such Member, Delegate or Resident Commissioner, shall be fined not more than three times

the amount asked, accepted or received *and* imprisoned not more than 3 years : and shall, moreover, forfeit his office or place, and thereafter be for ever disqualified from holding any office of honour, trust or profit under the Government of the United States."

Para 200 (Sec. III of the Criminal Code). "Whoever shall promise, offer, or give, or cause to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value to any member of either House of Congress, or Delegate to Congress, or Resident Commissioner after his election or appointment and either before or after he has qualified, and during his continuance in office, or to any person with his consent, connivance, or concurrence, with intent to influence his action, vote, or decision on any question, matter, cause, or proceeding which may at any time be pending in either House of Congress or before any committee thereof, or which by law or under the Constitution may be brought before him in his official capacity or in his place as such Member, Delegate, or Resident Commissioner, shall be fined not more than three times the amount of money or value of the thing so promised, offered, given, made, or tendered, and imprisoned not more than three years."

Para 202 (Sec. 112). "Whoever, being elected or appointed a member of or delegate to Congress, or a Resident Commissioner shall, after his election or appointment and either before or after he has qualified, and during his continuance in office or being an officer or agent of the United States, shall directly or indirectly take, receive, or agree to receive, from any person, any money, property, or other valuable consideration whatever, for procuring or aiding to procure, any contract, appointive, office or place from

the United States or from any officer or department thereof, for any person whatever, or for giving any such contract, appointive office, or place to any person whomsoever, or whoever, directly or indirectly, shall offer, or agree to give, or shall give, or bestow, any money property, or other valuable consideration whatever for the procuring, or aiding to procure, any such contract, appointive office, or place, shall be fined not more than \$ 10,000 and imprisoned not more than two years; and shall, moreover, be disqualified from holding any office of honour, profit, or trust under the Government of the United States. Any such contract or agreement may, at the option of the President, be declared void".

Para 203, (Sec. 213), "Whoever, being elected or appointed a Senator, Member of or Delegate to Congress or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified, and during his continuance in office, or being the Head of a Department, or other officer or clerk in the employ of the United States, shall, directly or indirectly, receive, or agree to receive, any compensation whatever for any services rendered or to be rendered to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party or directly or indirectly interested, before any department, court martial, bureau, or any civil, military, or naval commission whatever shall be fined not more than \$10,000 and imprisoned not more than two years, and shall more-over, thereafter, be incapable of holding any office of honour, trust, or profit under the Government of the United States.

Retired officers of the Army, Navy, Marine Corps and Coast Guards of the United States, while not on active duty shall not by reason of their status as such be subject to the

provisions of this section : Provided, that nothing herein shall be construed to allow any retired officer to represent any person in the sale of anything to the Government through the department in whose service he holds a retired status ”.

Section 204, “Whoever, being elected or appointed a Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment and either before or after he has qualified and during his continuance in office, directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or in his account, undertake, execute, hold, or enjoy, in whole or in part, any contract or agreement, made or entered into in behalf of the United States by any officer or person authorised to make contracts on its behalf, shall be fined not more than \$3,000. All contracts or agreement, made in violation of this section shall be void ; and whenever any sum of money is advanced by the United States, in consideration of any such contract or agreement, it shall forthwith, be repaid ; and in case of failure or refusal to repay the same when demanded by the proper officer of the department under whose authority such contract or agreement shall be made or entered into, suit shall at Once be brought against the persons so failing or refusing and his sureties for the recovery of the money so advanced ”.

Section 207, “Whoever, being an officer of the United States, or a person acting for or on behalf of the United States, in any official capacity, under or by virtue of the authority of any department or office of the Government thereof ; or whoever being an officer or person acting for or in behalf of either House of Congress, or of any committee of either House, or of both houses thereof, shall ask, accept or receive any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment

of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit influenced thereby shall be fined not more than three times the amount of money or value of the thing so asked, accepted, or received, and imprisoned not more than three years; and shall, moreover, forfeit his office or place and thereafter be forever disqualified from holding any office of honour, trust, or profit under the Government of the United States."

Section 237, "Whoever, directly or indirectly, shall give or offer, or cause to be given or offered, any money, property or value of any kind, or any promise or agreement therefor, or any other bribe to any judge, judicial officer, or other person authorised by any law of the United States to hear or determine any question, matter, cause, proceeding or controversy, with intent to influence his action, vote, opinion, or decision thereon, or because of any such action, vote, opinion, or decision, shall be fined not more than \$20,000, or imprisoned not more than fifteen years, or both; and shall forever be disqualified to hold any office of honour, trust, or profit under the United States".

Section 238, "Whoever, being a judge of the United States, shall in any wise accept or receive any sum of money, or other bribe, present, or reward, or any promise, contract, obligation, gift or security for the payment of money, or for the delivery or conveyance of anything of value, with the intent to be influenced suit, controversy, matter or cause depending before him, or because of any such opinion ruling, decision, judgment, or decree, shall be fined not more than \$20,000 or imprisoned not more than

fifteen years, or both ; and shall be for ever disqualified to hold any office of honour, trust, or profit under the United States."

Section 239, "Whoever, being a juror, referee, arbitrator, appraiser, assessor, auditor, master, receiver, United States Commissioner, or other person authorised by any law of the United States to hear or determine any question, matter, cause, controversy, or proceeding, shall ask, receive, or agree, to receive, any money, property, or value of any kind, or any promise or agreement therefor, upon any agreement or understanding that his voice, opinion, action, judgment, or decision shall be influenced thereby, or because of any such vote, opinion, action, judgment, or decision, shall be fined not more than \$2,000, or imprisoned not more than two years or both."

These go to show why the later Democracy in the United States found it expedient to stop particular types of conduct of members of Congress or Delegate to Congress where there had been no open conventions of Democracy fully established as probably there were in England. That may account for the absence of Legislation on the subject in English law. In view of the actual happenings, it is essential to incorporate such provisions in the law. The discussions in the Harijan only emphasise the need that Legislation on these lines should be undertaken here.

In the *Harijan* of January 18, 1948 on pages 522 to 524 are recorded the following observations which are relevant to the issue here in discussed :

"A letter from Andhra.

Gandhiji then referred to a letter from Andhra. He gave the following relevant extracts from the letter :—

'I hate to point out the shortcomings of an individual, but to shut one's eyes to the terrible consequences of the

rot set in in the individuals of an organisation like the Congress, noble in its origin and admirable in its achievements, would be heinous. This rot in the Congress is that of the peoples' representatives in the legislative bodies of the provinces who are the prototype of the rank and file. They are vociferous about stopping the wide-spread corruption, *but they themselves resort to worse corruption. They take money from the people to get licences of every description, indulge in black marketing of the worst type, trade on the ignorance of the masses, and corrupt the sources of justice and force the administrative machinery to get transfers for the administrative personnel.* The people are crushed between these two sets of people. Two hundred and fifty of these legislators let loose on the people in a province without opposition are, in my opinion, the worst plague. Is it after all for replacing the White rapacity by the Black that many noble souls who are no more with us suffered and sacrificed everything worth living for in their lives? There must be an escape out of this morass. If these legislators are not so numerous, the evils would be less. Fifty members in the lower house and half that number in the upper house for each province which is going to be smaller on the linguistic basis would reduce the nuisance. Will the constitutionalists embody this principle of less the number the better in the constitution of our country and save us from the rapacious legislators and incidentally from top heavy expenditure? "

He had a confirmatory letter from an old and aged Andhra friend from Andhra. *Gandhiji appealed to all whether Congressmen, Socialists or Communists to live and work for the good of India. If they all ran after power, where would India be? They should think of the interests of the country rather than their own or of those of their friends.*

In the Harijan of January 18, 1948 at pages 522 to

524 are recorded the following observations which are also relevant to the issue here-in discussed :—

CALL TO SELF-PURIFICATION

I told you yesterday of two letters from Andhra. One was from the aged friend, no other than Deshabhakta Konda Venkatappayya Garu. I give here extracts from it :

“The one great problem, apart from many other political and economic issue of very complicated nature, is the moral degradation into which the men in Congress circles have fallen. I cannot say much about other provinces, but in my province the conditions are very deplorable. *The taste of political power has turned their heads. Several of the M.L.As and M.L.Cs are following the policy of make hay while the sun shines. Making money by the use of influence, even to the extent of obstructing the administration of justice in the criminal courts presided over by Magistrates. Even the District Collectors and other revenue officials do not feel free in the discharge of their duties on account of the frequent interference by the M.L.As and M.L.Cs on behalf of their partisans. A strict and honest officer cannot hold his position, for false reports are carried against him to the Ministers who easily lend their ears to these unprincipled self-seekers.*

“Swaraj was the only all absorbing passion which goaded men and women to follow your leadership. But now that the goal has been reached, *all moral restrictions have lost their power on most of the fighters in the great struggle who are joining hands even with those who were sworn opponents of the national movement and who, now for their personal ends, enlist themselves as Congress members. The situation is growing intolerable every day with the result that the Congress as well as the Congress Government have come into disrepute.*

The recent municipal elections in Andhra had proved how far and how fast the Congress was losing its hold upon the people. The municipal elections in the town of Guntur were suddenly ordered to be stopped by an urgent message from the Minister for Local Bodies (Madras) after every preparation was made for carrying on elections. Only a nominated council was in power for, I believe, the last ten years or more and for nearly a year now the municipal administration has been in the hands of a Commissioner. Now the talk prevails that the Government would soon nominate councillors to take charge of the municipal affairs of this town. I, old, decrepit, with a broken leg, slowly limping on crutches within the walls of my house have no axe to grind. I no doubt entertain certain strong views against some of the Provincial and District Congress Committees. They now stand divided. And I have made no secret of my views.

"The factions in the Congress circles, the money-making activities of several of the M.L.As and M.L.Cs and the weakness of the Ministers have been creating a rebellious spirit amongst the people at large. The people have begun to say that the British Government was much better and they are even cursing the Congress."

Let the people of Andhra and the other Provinces measure the words of this self-sacrificing servant of India. As he rightly says that the corruption described by him is no monopoly of Andhra. He could only give first-hand evidence about Andhra. Let us beware."

It is a fact that it is not unusual to find members of the Legislatures actively participating in affairs of contract etc. and officers in the administration not unusually have visitors who in the first introduction never hesitate to say that they are either relatives or close friends of such and such ministers or members of Legislatures. I should suggest that in the new piece of Legislation whether it takes

form of an amendment of chapter 9 etc. of the Indian Penal Code or a new law altogether is evolved, particular attention should be paid to these aspects. It is emphasised that they are fruitful sources of corruption. *A member of the Legislature or friends or relatives of the ministers, if they enter into contracts do attempt to have certain special privileges which run counter to the principles of right administration, or even of honest administration.* A relative of a member of the Legislature, for example, takes contract for the supply of Potatoes from Shillong at a certain rate of a certain specified standard. On arrival the consuming department finds that the supply is much below the standard given in the specification of the contract and then starts a haggling. It ends in the contractor getting as much as possible out of the State funds if not the full rate already in the contract. An ordinary contractor would have met with a different deal. Attempts to exercise undue influence on the officers entrusted with the passing of such commodities as are not up to the standard are not uncommon. I should think that the legislation on the lines indicated by the U. S. Law is very desirable. There are certain provisions for prosecution for some other dereliction of duty by public servants.

It is worth while to see if some of the more stringent measures of the American Law should not be embodied in the law here. It is worth, as well, considering whether any interference and canvassing by a minister not in charge of the Department or by a member of the Legislature without authority from the Government with either the Public Service Commissions or any public servant about an appointment or any matter in his administrative jurisdiction should not be treated as a criminal offence. From personal experience, as at one time Head of a Bengal Government Department, I could note the technique followed.

In any matter in which a Minister is personally interested a brother or cousin comes to interview the officer and with an assertion that he was sent by the Minister to talk on a personal matter, ends the talk with a suggestion as to what could be the appropriate order in a particular matter. A period is allowed to elapse to see if this move has the desired effect. If not then comes an invitation to tea, lunch or dinner according to the measure of the self-interest involved—a flattering compliment to the officer—and the matter is broached. If this too has not the desired effect and the officer still nurses his conscience a message over the phone is the inevitable next step. All these interferences could stop only with the growth of the public conscience and with improvement in the standard of public morals. But these improvements are not in sight yet. It is possible that a law might direct the growth of the right attitude. Over and above the improvement in the Departmental procedure or in Law certain changes in procedure and outlook are essential if corruption is to be checked. These are dealt with in Part III.

To make the fight effective against corruption in the public administration and in the administration of local bodies an all out attempt must be made. Nibbling at one point or another is a waste of time and a waste of energy. That attempt to be effective must develop law, procedure and details of public administration which will make corruption difficult, even if not impossible, and detection certain when corruption does occur even in places otherwise high.

SUMMARY OF CHAPTER II

HISTORY

History of the growth of integrity in the Public Services

throughout the 19th century and the first decade of the 20th century.

Cracks in administration in Bengal during and immediately after the First World War.

Causes contributing to the present break-down and spread of dishonesty.

REMEDIES—LAW

- (1) Sec. 161 and 165 I.P.C. should be made cognisable and applied under certain safeguards. An enquiry against Gazetted Officer should be carried out by a Police Officer not below the rank of a Deputy Superintendent. Immediate intimation should be sent to the Head of the Department or the Director of the Bureau of Public Administration. No arrest, without the order of a Commissioner or Officer of corresponding rank of a Gazetted Officer.
- (2) Statements to Police Officer under certain conditions should be made admissible as evidence.
- (3) The amounts of punishments in bribery cases should be enhanced and the law amended so as to confiscate properties acquired through corrupt means.
- (4) Though not provided by Sec. 1 of the Prevention of Corruption Act of 1906 in England the suggestion of the District Administration Committee for a presumption should be adopted.
- (5) As recommended by the District Administration Committee a new Offence governing sudden accession of wealth by a public servant or his dependant should be embodied in the law.
- (6) The inference and onus of proof contained in Sec. 9 (1) or Ordinance 29 of 1943 should be embodied in the Act.
- (B) The need of a self-contained statute lasting, if

necessary, for ten years to be passed by the Central Legislature emphasised. Any law on the lines of *droit administratif* discouraged.

- (C) Additional offences on the lines of the American Law dealing with members of Legislature participating in contracts etc. recommended to be added to the law of the country. Canvassing with Public Services Commission or Heads of Departments for appointments suggested to be made an offence. Perfection of Law and procedure must be carried to the highest pitch. Gandhiji's views in the Harijan of recent time quoted.

CHAPTER III

MISCELLANEOUS

THE STANDARD TO BE SET BY MINISTERS AND HIGHER OFFICIALS. GENERAL PRINCIPLES.

It is to be realised that however perfect the rules might be and however meticulous the evolution of the laws could be, nothing would stop corruption or deterioration in efficiency or the integrity of the administration unless the men in responsible charge set by their own conduct a standard which might animate the entire administration. Heavy responsibility rests, therefore, with public men who are to occupy positions of responsibility and the higher officers of the departments who have to control and direct numbers of subordinate officials. The objective personality has a definite direct effect. The ascetic idealism of men in power would inspire and lift up the entire tone of the administration which no rules or laws could ever do. The higher the position the stricter must be the guarding against lapses which people lower down imitate, probably in a much more magnified form. I would briefly note the points that might be considered as general principles.

- (a) The responsibility of the public press and of public opinion is great. The capacity for righteous judgment must have to be developed. Criticisms only for the sake of criticism and often adverse and perverse have a disastrous effect on the morale of the public administration and of the personnel. It is probable that the unnatural conditions of a non-national state petrified the attitude of the opposition and developed

the unhappy desire of always turning the blind eye to the difficulties of the administration and of the public servants. The result has been that the administration and the public servants get hopeless of expecting a just judgment and an appreciation by the public of their difficulties. They develop in time the Bernard Shaw attitude: "They say. What do they say? Let them say".

The report of the Committee on the training of Civil Servants presented to Parliament in May 1944, correctly observed "Public servants, like every one else, respond to praise and blame; enthusiasm and a spirit of service cannot be expected to flourish among them if they feel that their efforts are being disparaged and their difficulties overlooked by those whom they are endeavouring to serve. A more generous appreciation by the public of the work of the civil servants would go far to ensure that such appreciation was increasingly deserved." (Page 33 of Report of the Committee on the training of Civil Servants.) I would in this connection suggest that a freer exchange of views between the press, the public men and the officials should be developed and there should be conferences arranged to discuss and exchange views on important aspects of the administration.

- (b) A journal to show the activities of the State and of the Public services and welcoming suggestions for improvement might as well be thought of. Unless, however, taken in the right spirit the journal might deteriorate into a record of sterile controversy and nothing more. But with a spirit of service on both sides the journal might prove a useful adjunct to the administration.
- (c) There is one other aspect which has to be emphasised. In paragraph 211-214, the district administration

committee dealt shortly with certain aspects of the communal ratio rules and stated that the subject of communal representation in the services is not within its terms of reference. In the chapter on the Public Service Commission, Section D, the District Administration Committee has stated the limitations placed on the functions of the Public Service Commission on the communal question. In the period of 20 years that has elapsed since the new constitutional changes commenced their operation the communal question developed into dimensions which, at least for last two centuries, the country had never seen. The question of recruitment to the public services depends on certain fundamental principles and the one unquestioned principle accepted in all countries and by experience recognised as a right principle is that the social organism is entitled to get from its public servants the maximum of efficiency at an economic cost to the country. It is not fair to tax-payers to spend the money which the tax-payers contribute and get for them not the best available materials in the country. The Public Service Commission complained more than once that the elaborate rules of communal representation and ratio made into almost a law in the country were often twisted, misunderstood, misapplied to the advantage of one community and to the disadvantage of another. A time has come for reconsidering the whole problem. There was a large amount of dissatisfaction in the country and a certain section nursed up grievances against the communal rules which though not expressed in a combined fanatical way were there. Their working in the different departments bred dissatisfaction, demoralisation, inefficiency

and corruption and I only conclude without going into further details with the words of Bertrand Russell who at page 101 of his new book "Power" makes the following remarks :—

"Where some classes containing individuals of energy and ability are debarred from desirable careers there is an element of instability (in the States) which is likely to break into rebellion sooner or later."

Both in the matter of recruitment and of promotion—not merely in the matter of ordinary promotion but to special services and special posts—any other criterion but that of merit spells disaster to the country as a whole and to the tax-payers and the masses who pay the piper in particular. *It has another aspect. It is this—the filling up of appointments is not a question of distribution of jobs to communities on a rule of three basis but is a question of running the administrative machinery at the highest level of efficiency at an economic cost to the tax-payers. It is vital to the country.* If this is not acted up to the level, efficiency deteriorates. The best men lose an interest in work and put in just the minimum. A healthy emulation disappears and the machine of administration stagnates at the lowest level. The social organism in consequence suffers at every level in the process. In England when nepotism and political patronage system operated in the matter of recruitment and promotions in the services this inevitable result followed. It is on record that this inefficiency led to disaster in diverse spheres. In June 1855 in the House of Commons, Mr. Laynard—a member—moved "this house views with deep and increasing concern the state of the nation, and is of opinion that the manner in which merit and efficiency have been sacrificed in public appointments to party and family influences and to a blind adherence to routine has given rise to great misfortunes and

threatens to bring discredit upon the national character and to involve the country in great disasters". Sir Stafford Northcote in course of the debate pointed out "that habitual disregard of the principle of promotion by merit, and the supercession of men in the service by the appointment of strangers from outside the service to the highest and the best paid situations, had produced the inevitable results of demoralisation and inefficiency." He contended that division of labour, "*appointments through competition, and promotions by merit would produce a more efficient and less costly service.*" He warned the House that so long as the Civil Service Commission was confined to the imposition of a merely qualifying test it would become a "Board of stereotyping mediocrity or concealing bad appointments and would prove powerless to resist patronage" (see Report of the Royal Commission on the Civil Service—4th Report Para 8). It is by the steady pursuit of policies that provided greater appreciation of merits and less chances to nepotism and political patronage that efficiency was raised in England. Our Public Service Commissions must not be permitted to do what the Civil Service Commissioner in England according to Sir Stafford Northcote was found doing in 1855 and probably in a more helpless and mechanical way. The problems of India, of all Provinces and of Bengal are acute. On their right solution depends the progress of all communities—even of the communities which were supposed to be benefited by the communal ratio representation in the services. If anywhere "dedicated super-intellectuals", as Mr. H. G. Wells puts it, are needed both in the Public men and in the services for a way out of this apparent quagmire of economic, constitutional and moral stagnation it is in India, in the Provinces and in Bengal to-day. Problems must be decided on their merits and not with a communal emphasis.

Any fiction that panders to a wrong sentiment at the cost of right solutions of the urgent and serious problems, if allowed to persist, will be a crime against the people of all communities. A service recruited in a way that does not inspire the officer with a sense of faith in his powers to hold his own in a competitive world slides down to a level where corruption is easy to creep in. The demoralisation either due to this or to frustration through exercise of nepotism provides easy pathological conditions for undesirable influences successfully to operate. I would suggest, therefore, that the services should be freed from political and communal moorings. The Public Service Commissions should be resurrected. All appointments and promotions divested of political motives and patronage should be entrusted wholly to the Public Service Commissions. It is essential too that men appointed to the Public Service Commissions should be selected with very great care. The Governors and the Ministers must rise above an attitude of patronage here.

- (d) There must be a new consciousness among the public servants in their attitude towards their work as well as towards the public. Even in England the need for a new attitude in the Civil Services is being advocated with great emphasis by eminent writers on administration and Political Philosophy. New Schemes have been worked out which are calculated to ensure a better and more efficient discharge of duties. The aloofness of the public services from public opinion in this country unfortunately leads to a good-deal of happenings being kept out of the purview of the public servants. It is necessary and legitimate that they should know them. It is specially so necessary in the case of officers in positions of responsibility. A journal like *The Statesman* which

generally voices balanced opinion on administrative matters was compelled to remark on the Dunnette case :—"How extensive the pernicious system practised by Major Dunnette had become even early in the war is illustrated by Bhagaban Singh's admission in Court that he was able immediately to quote without reference to Dunnette, the figure of Rs. 1500/- as a regular fee for posting an officer who sought to evade overseas services. The judge was scathing about this arrangement, and perhaps did not exaggerate when he said that by September 1943, it was notorious in RIASC Circles that postings and promotions could be arranged almost at will by payment of bribes. There is reason to infer that the last of the Dunnette scandal has even yet not been heard. Preliminary investigation of cases involving moral turpitude is usually a protracted affair ; the average bribe-giver as well as the bribe-taker is careful to cover his tracks—a feat which, owing to the privy and furtive nature of the offence itself is often not difficult. Public uneasiness that squalid intrigues in such country-wide ramification should have escaped detection for so long is understandable and proper. Major Dunnette may be the chief and the obvious culprit. *But others senior to him can hardly escape responsibility altogether for the general slur cast on an important branch of the Indian Army at head-quarters by such venal practice. That an officer junior in rank should have been able brazenly to circumvent authority at its very seat for so protracted a period and to enrich himself much in the process suggested slackness somewhere higher up. If not already made, a thorough and unsparing inquiry seems overdue.*" The Dunnette case is not an exception. The complete ignorance or inaction of the superior

officers of responsibility in the matter of misdeeds of subordinates is not an exception. If one is so inclined he gets to know many of the by-ways of the administration and deeds done all in the sly that happen daily in almost every public office or Department in India and the Provinces. A vigilant supervising officer could detect many misdeeds if he had the will, the moral calibre and the courage to live in the brave new world which is spread around him. The lapses are not restricted only to the temporary officers connected with war and its activities but have fast become the prominent features of the general administration in many spheres. Hence the closer the association of the officers with public opinion the greater will be their opportunity to have a clear perspective of all that is happening around them. In the Revenue Department activities prompted by war and concerned with the valuation and the payment for requisition and de-requisition etc. of properties under the Defence of India Rules many acts of dishonesty were easy to detect and to control if the superior authorities were a little more alert and less inclined to be listless and less platonically casual in their work. It should be emphasised that people holding position higher up have a personal responsibility for dishonesty of officers working under them. Each individual officer must devise such means as he considers best to keep his eyes and ears open, to know, and have a correct appraisal of the deeds or misdeeds of the officers in the department of which he is in-charge, and he has to be impressed that he is not merely an innocent on-looker but has a duty to discharge and for the laches of subordinates he himself is liable to severe punishment. Mainte-

nance of Law and order, important as it is and must continue to be so in future, is not the only duty. A good administrator must have a thorough knowledge of the psychology of the people, whose affairs the public servant is paid to administer, and of the material and moral conditions under which they live. A public servant must realise his responsibility to know and improve the conditions under which people live. The administration must more and more take the shape of active social services organisation where a personal touch of the public servants is always called for together with a close familiarity with the social forces at work. Aloofness and a high-browed attitude in a Public servant will be fatal in the circumstances of to-day. The machinery must create conditions to help the officers to know more of the people and their problems. This will tend more and thus lead to wider knowledge being acquired and at a truer perspective. There will be less and less chances again to work drifting to the hands of unscrupulous subordinates. It will be one effective method of checking corruption and securing greater efficiency.

(e) MINISTERS AND THE PUBLIC ADMINISTRATION

It is obviously not easy to suggest ways and means as to how the new people coming to power could adjust themselves to the public administration. But in so far as it is germane to this question of corruption in the public administration the new people must be told of the conditions which with or without the knowledge of the ministers, lead to circumstances that help corruption. In the Fourth report of the Royal Commission of the Civil Services in England the

following observations were made to which attention may be drawn. The Commissioners at page 58 said, "Throughout our recommendations we have kept steadily in view the fact that supreme power must rest with political Heads of Department as the ministers responsible to your Majesty and to Parliament. But questions of promotion that touch so closely the discipline of departments your Majesty's ministers should attach particular weight to the advice of their principal, permanent officials in this matter. *It is not often that a minister remains at the Head of a single department for a period long enough to enable him to become fully acquainted with the comparative merits of many of the officers and if the judgment of the permanent Head of the Department is disregarded there is a danger that the few officers who are brought into immediate personal contact with the political chief for the time being may gain an unfair advantage in the matter of promotion over their colleagues whose works may be of equal or greater value though less conspicuous.* For example we have received evidence which suggest to us that a short period of service as a private secretary to ministers may carry disproportionate weight with respect to promotion." Contacts with ministers over the Heads of departmental superiors tend often not merely to a breach of discipline but to situations which are conducive to a breach in integrity of the officers concerned. It is almost a common knowledge now that individuals of the public permitted to interview ministers at their residence and to have discussions and easy approach to them, utilise such contacts not infrequently to their personal advantage and to the detriment of public administration and to the demoralisation of public officers. One can

appreciate the difficult situation the popular ministers in a new democracy must be in. But unless some conventions are developed specially in a country where among the members of the public genuine ethics and correct moral principles are not yet so developed, when dealing with public offices and officers of public administration, there is a large risk of abuse. Probably if the venue of interviews be transferred to the public offices, instead of being at any one's own private residence, even if one has to start office work in office earlier, it will be an improvement. That will be some sort of a check on dishonest men trying directly to ingratiate themselves on ministers or showing themselves off and emphasising their importance before the officers of the public administration and thus exploit the position. How a minister must behave with the public of a new democracy as will enable him to keep public and private obligations scrupulously apart, and how he should keep his eyes and ears open for all that is happening in the administration and yet keep them closed against suggestions of malice and personal vindictiveness can hardly be laid down in details. But that it is essential to develop that attitude can hardly be over-emphasised. The same principles apply to public servants of all ranks specially the higher. My Hindu mind unequivocally prompts the suggestion for the development of intense religious and moral sense throughout the social organism but in a world keen on fighting religion I recognise that it will fall on deaf ears.

II. IMPROVEMENTS IN GENERAL PROCEDURE OF ADMINISTRATION

- (a) Certain procedures and defects have developed in the public offices during the last 40 years which inevitably lead to many dishonest practices. Forty years ago the Collectors, who had at that time no cars, or the Commissioners regularly attended offices at fixed hours and sat in open courts for a considerable period of their stay in offices—Courts to which the public had access and where people could represent any grievances without let or hindrance. Open Court, availability of officers to the public and a rigid rule of law had been more marked features of the British administration when it was at the height of its efficiency towards the end of the 19th century. They were consistent not only with the principles and procedure of any developed national state but also consistent with the history and genius of this country. Even in the days of the Moghuls the Emperor had fixed days when he had to sit in Durbar (*Durbar Aam*) for the general public to approach and represent their grievances to him. Unfortunately in course of the last forty years, through probably a variety of circumstances, most of the higher responsible Executive and Quasi-judicial officers do not sit in the open courts for most of the time. Officers sit either in their residences where they probably have an office room or work in Khas-kamra, entry to which could be secured with cards after a long waiting at places not always provided with convenient accommodation. This fact that the superior officers are not approachable to the public is very much taken note of by the dishonest staffs who know that their misdeeds will hardly be known to

the higher officers. A thorough-bred pucca Police-Daroga could have gambling dens near about the Thana paying handsome fees on the full security of the knowledge that the Superintendent of Police will never be coming without giving him due notice or at least giving opportunities of knowing that he might be coming. He knows too that the "Saheb" cannot be approached. A land acquisition compensation paying staff can easily take handsome deduction from the payees fully conscious that the Deputy Collector would not leave the chair in his office and the Collector would never pay a surprise visit or have a look round. Tuccavi loans are distributed but between the amount sanctioned and the amount received by the unfortunate recipients, there is a wide difference. Instances can be multiplied from every office. Many who care to see do know. But the examples given provide an indication as to how corruption spreads and continues unchecked unless the Heads of administration make it one of their primary duties to see that the administration is kept spotlessly clean. Every officer should sit in open court at least for certain fixed hours during the office time when any member of the Public might approach him. Whole time office work at residence or in the Khas-kamras should be discontinued. I should suggest also that in every office there should be an officer charged with the definite duty of listening to people's grievances, enquiring into the legitimacy of those grievances, and looking into the queries that people might like to put. A fixed time or a fixed hour might be set apart either by at least the Head Ministerial Officer and preferably by a specified gazetted officer ear-marked for the purposes.

(b) The tendency to stop lawyers to appear and represent parties should cease. The system now in vogue in India is yet a foreign system whether of law or of procedure. It is being worked among people who are over 80% illiterate. Officials have no sixth sense to get at the truth. The use of his intellect can be facilitated by presentation of facts and of law by persons who are trained to present them. While undue procrastination or quibbling can easily be checked by a firm official, the denial to get a case represented by a properly trained individual is often a denial of justice to the ignorant and the illiterate people who come for redress of grievances as parties. In recent times the official, where law permits it, denies the chances to a lawyer and some time by law and its provisions the appearance of a lawyer is prohibited. In the Bengal Agricultural Debtors Act this prohibition was by law and the Board consisted of men who had no knowledge of law. It is common knowledge that a decisions in a large percentage of cases under the Act were based on bribes. In other cases "Offices" and "Clerks" have the best of the advantages when lawyers could have no access to represent cases in open courts. In the interests of the public and to stop corruption 'open Court' and 'open representation by trained men' would be great correctives and should be the uniform rule. It should be realised that it is a definite encroachment on citizen's right to deny him the right to arrange for the best representation of his grievances before a Public Servant for whose up-keep through taxes he pays handsomely and for the particular hearing pays equally handsomely to the state in Court fees. This growing type of "New Despotism"—to quote

Lord Hewart's phrase—must in the public interest be rigidly controlled in a New Democracy.

III. REVENUE CASES AND THEIR DISPOSAL

- (a) Revenue cases are growing in large numbers through the various enactments both of taxation and of changes in a large variety of laws. But there is no revenue code to show what exactly is to be done and how people feeling aggrieved have their grievances mitigated or listened to even if not removed. The result is that they are left in uncertainties that lead to frequent references to and contacts with office assistants with often inevitable undesirable consequences. I should think that the present Practice and Procedure manual of the Board of Revenue in Bengal and the powers in the rules and the manuals of the various departments might be consulted in order to evolve the general procedural part in Revenue Cases which would be available to the parties, to the officers, and to the public. It should lay down the exact procedure to be followed in each type of cases.
- (b) Various questions of law and procedure in the new enactments arise. Authoritative decisions thereof should be arrived at. Some manuals are allowed to be out of print for long (for example the Bengal Excise Manual) while circulars and instructions to officers are issued to which the public has no access. These lead to considerable mystification and help undesirable subordinates to exploit helpless victims. The Manuals with all instructions, circulars and corrections, should be available for sale to the Public who would know exactly what the requirements, of law and of the rules having the force of law, are. Definite responsibility should rest with the Depart-

ment for their timely publication. The Government should see that the Department is helped to discharge the responsibility by prompt orders.

(c) Certain publications are marked "for office use only". Anything which has got to do with the public or the procedure of any public office in which the public has any interest should be available to the public too. As an example it may be cited that the abridged "'Famine Code" which the Bengal Government published sometimes ago was "for office use". It was a helpful compilation and if made available to the public could have gone a great way in educating the public as to what it should do and whom it might approach when symptoms of famine—for example that of 1942-43—were in sight. I should think that the Government should make it a point to bring out in a complete form publications to educate the people. Normally nothing should be marked 'for office use only'. In the existing situation of the country it is a primary responsibility of the Government to educate the public in the ways of the public administration. Anything that is kept away from the public leads to mystery and thus to corruption. Government publications, at a little more than the cost rate should be available to the public and should be complete and self-contained.

(d) The fourth is the method of disposal of the Revenue cases. At present when a petition is filed it is the custom for the presiding officer to send it on to office for notes. The office notes are kept back from the parties, though they are considered by the officer, in coming to decisions and in disposing of the petitions. The result is that the writer of the office notes gets an undue prominence in the eyes of the

Public and the writer is fully conscious of the advantage of the situation. Many times in course of my professional career I have been asked by litigants whether they should pay such and such sums—fairly heavy amounts—demanded by the writers of such notes. Even in the highest Court (the Board of Revenue) the procedure for receipt of applications for appeals and of revisions differ widely from the procedure followed in the High Court. Under the High Court Rules the petitions of appeal or of revision are moved before the judges in open court. The mover is heard and if a *prima facie* case is made out a rule is issued and a definite date is fixed for all parties to come and state their cases when after hearing a decision is given. Under the Board of Revenue's Rules of business neither the Hon'ble Member nor the gazetted Secretary to Board of Revenue receives petitions but they are to be filed before the Sheristadar. The Sheristadar, with his notes, specially in Revision Cases puts up the petition and it is often disposed of in the absence of parties. The question of approximating the procedure in the Board of Revenue—which is the highest Revenue Court—to the procedure of the High Court should be considered. Even in cases of Revision the same procedure should be followed. The Revenue Courts are quasi-judicial courts and as observed by the Committee of Minister's powers appointed by British Parliament in 1932, "The principles of natural justice are applicable as much to quasi-judicial as to the judicial decision. No party ought to be condemned unheard; and if his right to be heard is to be a reality, he must know in good time the case he has to meet" (page 80 of the Report). Quite a large number of classes of cases

have developed where practically the Board of Revenue is the final authority and the jurisdiction of all other Courts is ousted. The recommendation of the Committee of Minister's powers in England is relevant here too and is worth quoting.

“(iv) Before a decision is given whether it be judicial or quasi-judicial each of the parties to a dispute should be given the opportunity of stating his case (not necessarily orally) and also of knowing the case which he has to meet and of answering it if he can.” (Page 116). In India with the background of a system not indigenous to the country an opportunity of meeting points that may arise in the minds of the revenue authorities for “oral” argument is a definite improvement. An open court system here too will go a great way in stopping undesirable practices lower down the organisation. In France—the seat of *Droit Administratif*—the French jurists, since the days Dicey criticised the system in his History of Constitutional Law, have developed the process which they express as “Judi-ciasing” the administrative law and the procedure. This in short means the process of approximating the procedure in quasi-judicial proceedings to the procedure of judicial courts. This is a concession—legitimate and important—to public opinion and to public need.

IV. CRIMINAL

In Criminal cases I think a greater independence of Magistrates and the Criminal Judiciary should be aimed at. I would not like in this report to discuss the question of the reconstitution of the Criminal Judiciary and placing the entire judiciary under the judges or of combining the offices of the Superintendent of Police and the District

Magistrates and so forth but in the context of the limited issue under discussion one feels that some changes under the existing structure will be helpful. For example:—

- (a) in cases under sections 144 and 145 Criminal procedure code the cases are required to be started with a Police report on the question of the party in possession so that the opposite party might be called upon to show cause why he should not be restrained. Any one acquainted with the trial of these cases knows that in a large number of such cases there is a constant pressure on the Police to report in favour of a particular party who must appear as the party in possession before the court. That this is a great source of corruption can hardly be denied. They, who have any inside experience of these criminal cases, know it. There is no reason why the Magistrates should not either in person inspect or on evidence come to the conclusion as to who was the person in possession without reference to the Police. Settlement maps and records often will help for summary divisions. The Police report should be confined only to a report on the likelihood of breach of the peace.
- (b) To judge the financial sufficiency or the solvency of the persons offered as security in bad livelihood or bail cases the report from the Police is called for. There is no reason why this should not be decided on evidence by the Magistrate himself or on the report of agency other than subordinate Police.
- (c) Executive instructions are issued about the granting of bail in non-bailable cases in which it is generally insisted that the police must be made to report on the case and it is on the police report that the Magistrate generally decides the case. There is no

reason why the Magistrate should not be permitted the freedom, unhampered by police report, to come to a decision, on the point. The police might be permitted a hearing before the Magistrate comes to a decision and given the hearing that it deserves. A citizen's right to liberty is a valuable right and cannot be made the sport of a Policeman.

(d) The superiority of subordinate Magistrates and their position vis-a-vis the police should be marked and clear. The supremacy of the District Magistrates and their complete independence from the influence of police reports should be always aimed at. If the rule of law is to be broad based, and it must be so, the confidence of the public in the unhampered administration of justice by the magistrates must be secured. This confidence is a great bulwark of the State and that conviction can probably free the administration from a number of consequences including corruption.

(e) It is time I think that the efficacy of the Honorary Magistrates system should be re-examined. Probably at the start a higher ideal was aimed at. But to-day an Honorary Magistrate is often appointed as a favour and men of the right type are rather the exceptions than the rule. Though they draw no pay they are not often though not always without an income. I think the appointments should be restricted only to men of real financial status, moral worth, and social position. Normally an appreciable number of men appointed does not enjoy a high reputation for honesty nor for capacity though there are exceptions.

(f) In the judiciary in Criminal or Judicial and as well as in all departments the system of appointment of

a responsible officer to devote a fixed time on fixed dates to hear public complaints or answer public queries will be a definite improvement to stop the development of undesirable practices.

- (g) The District Administration Committee in para 228 made four recommendations for administrative remedies against corruption. They are numbered (i) to (iv). For both (i) and (ii), that is for great care being taken in selecting officers in drafting rules prescribing the basis on which permits are to be granted and for the necessity of thorough inspections the suggestions are good so far as they go. But neither the one nor the other could go far in checking corruption. As an example it may be stated that "A", "B" and "C"—are applicants for permit. All the three satisfy the conditions and "C" is selected. The papers in office would be completed and a thorough inspection would discover nothing wrong from the papers. The reasons for selecting "C" and for rejecting "A" and "B" would not be in the papers for "C" satisfies the conditions. To make the recommendation (i) (ii) (iii) effective the superior officer should set apart a time to hear the "rejected" men's cases and grievances and allow them opportunities to represent their cases. The system would keep the subordinate staff in check and on its guard and will be an effective method to redress grievances and stop corruption. The fourth suggestion, that officers offered illegal gratification should report to superior officers at once, probably is based on the supposition that an innocent stranger of an officer is accosted by a stranger of the public and forthwith a bribe is offered. Probably most officers of reputed honesty and integrity from their experience will bear

out that they have been very seldom offered bribes. There is a technique of bribe giving. There is a group of people always in and about courts and offices which specialises in this. It includes outsiders, touts, peons, clerks in office, lawyers and men who pass for respectability. They study officers carefully. They discover whether they have any weakness of sex character, for alcoholic drink, of living beyond means, of great parsimony. Association is then established to exploit the weakness. Through these associates a bribe is offered and accepted. Every Police Station, every assessing office (Income Tax or its like), every civil and criminal court has its inevitable group. Every new office or Department develops the group who "knows" and to whom victims resort. It is seldom that honest officers are confronted with a bribe. The District Adm. Committee's remedy (iv) will thus cover only a small fringe of the evil. Appendix I contains extracts of the recommendations referred to.

V. TRAINING OF OFFICERS

Finally on the question of training of officers one endorses the recommendations of the District Administration Committee of Bengal in para 234-240. One of the most fruitful sources of corruption in the public administration to-day is a lack of necessary equipment in knowledge and to a lack of interest of officers of various grades in their work. The result is that there is too much dependence on somebody either on office ministerial staff for office notes or on outsiders and the officers are consciously or unconsciously easily bluffed. The bluffer reaps a harvest.

The old system when the collector had time to look after the training of the subordinate gazetted officers has disappeared. The Collectors hardly now have the time to look after the training of the new-comers. They know little of these officers and their work and much less their character. Inspection by superior officers, even if held, is very mechanical. It can be noted that many offices and Departments are not inspected as required by the rules and even when inspected the inspections are too mechanical to be of any use. There is no one to control. Settlement operations are over and there is hardly any chance of reviving settlement training on any large scale. The settlement training gave an insight into the life of the villages and the forces that operated in the villages. The period of training for the bulk of officers, was however too short for any thorough knowledge and as they came as very junior officers without any much knowledge of or an insight into the administration they could not quite examine the effect of the different departments of the administration on the villagers. Even this useful training has practically dropped out. The result is that the officers are left to shift for themselves without any proper guidance and of chances of systematic training. Secondly there has been a lack of interest in work of the officers themselves. It is probably true that they do not find some one to guide to develop any interest in their work or an appreciation of ideals. The result is what can hardly be denied that there has been a rapid deterioration in the quality and the calibre of officers all round. The communal representation in services and the communal preferences coupled with the influence alleged to be exercised on or by ministers and legislators has created a lack of conviction that devoted work or merits will have a value or appreciation. In all sections there is a widespread

cynicism and a distrust that merit and hard work can lead to anything or anywhere. The recruitment of people not the best in the social organism and often appointments to preferential places of people who had someone else to back other than their recorded merits lead to an attitude that it is not work or good work that secures chances of betterment in official careers but personal patronage. The result of all these is a definite attitude of indifference to efficiency or a bar to the creation of a healthy optimism. A spirit of emulation which prompts officers to better their equipment or improve the quality of their work and to receive the necessary reward disappears. On the other hand the lack of interest of officials specially of the gazetted rank in work has resulted in a good deal of work being shuffled on to the subordinate staff and ending in orders depending on notes which they might submit. The consequence that is inevitable in the circumstances follows. That consequence is that means other than fair are adopted to secure those notes which can lead to orders being passed by the gazetted superiors in the way a party wants. Other countries passed through similar stagnation and vigorous steps had to be taken from the beginning of the middle of the 19th century to raise the efficiency of the public offices. A social organism or state can hardly function with an inefficient, corrupt, listless, staff in any sphere. In the report of the Commissioners of the public services dated 23rd November, 1853 in England, the Commissioners found that admission into the Civil Services was indeed eagerly sought after but it was for the indolent or the incapable that it was chiefly desired. They stated that no pains were taken in the first instance to secure a properly qualified person for a vacant office and that nothing was done after the confirmation of the appointment to turn to the best account the abilities which the person

appointed might happen to possess. The root of the evil they found "to lie in patronage and they recommended that patronage should be abolished", and that persons should be admitted to the civil services by means of competitive examinations open to all candidates of a prescribed age who might choose to present themselves. They proposed that the examinations should be conducted periodically by an independent body of examiners which could be preceded by a test of age, health, and character and followed by a period of strict probation for successful candidates. The Royal Commission on the Civil Services in their 4th report emphasises that experience shows that as a rule the best University training ripens natural ability and develops administrative capacity and it is for this reason that they "have urged that facilities should be provided for the most promising boys of primary and secondary schools of the country to get to the University and enjoy the advantage of their teaching. We cannot too earnestly repeat that it is not by lowering the standard of education of the higher ranks of the civil services but only by enabling the clever sons of poor parents to benefit by University training and thereby enter the civil services that the interest of democracy and of the public services can and ought to be reconciled." (Page 39 para 32 of the 4th report of the Royal Commission on Civil Services). Even in England where both the services and the standard of morality of public men have risen to a high level, doubts have been expressed about the competence of the civil services and the service personnel to face the problems of the new world that has come or is coming. Professor Laski, in a recent utterance, has expressed great doubts about the competence of the civil servants there, in England, to do effective work for the state that has to take responsibility of many new problems. He has emphasised that

the work of the civil service "is marked by a passion for the departmental traditions, its habit of believing that the innovation suggested from outside or if even from below is almost certain to be wrong. The officers in this category, we are considering, are not likely to be successful in the mental and moral climate of a society pervaded like our own by the religion of inequality." (Page 120, Plan for Britain). Mr. J. D. H. Cole an eminent publicist has also expressed in the same strain about the incapacity of the existing public servants for satisfying the conditions of the new society. He says "I am worried about the civil service—its department-mindedness, its devotion to routine and the lack of fit between the civil service system worked out long ago and the sphere of Government activity which has been immensely widened and altered in essential character specially on the economic side." If that is true in England how much truer it must be in India. Here an entirely different motive created the higher public servants and regulated their constitution and their recruitment and that tuned up the entire system of public services up to the lowest rank. It was the whole system and the organisation that were to serve a particular policy—a policy for the Government of one country of a different race by the race of another country living thousands of miles away. In case of conflict it is the interests of the ruling race that prevailed. The whole policy is going to be changed. The officials, not that they should disregard the importance of law and order and of many other administrative principles which were introduced and must always be considered as indispensable in any modern state but, will have to adjust themselves to entirely new conditions. The predominant note of these new conditions will be social service of a real genuine and abiding character. Many economic problems have to be studied.

The defects of the existing system have to be resolved and practical remedies found. The remedies so found will have again to be applied by techniques which will make them effective yet with keen watch over the financial implications. Else things will drift to undesirable channels and to many with anti-social proclivities. A thorough training of public servants is essential for their proper equipment if corruption has to be stopped. Expenditure of public money has to be directed along right channels and the efficiency of the organisation as a whole has to be improved to serve effectively the social purposes and meet the demands which the society will make on all its public servants in India of tomorrow. The British Parliament appointed a committee on the training of civil servants which submitted its report in 1944. It laid down certain specific procedures for the thorough training of the public servants of that country. The committee realised that the aim should be to consider in what ways at their different levels the servants of the state could be assisted to attain and maintain the wider outlook, the greater adaptability and the technical knowledge which the state servants would be called for to exhibit in the years that lie ahead. They stated that there were mainly five aims of training. "First, the training should endeavour to produce a civil servant whose precision and clarity in the transaction of business can be taken for granted. In the second place, the civil servant must be attuned to the task which he will be called upon to perform in a changing world. The Civil Service must continuously and boldly adjust its outlook and its methods to the new needs of new times. Thirdly, there is a need to develop resistance to the danger of the civil servant becoming mechanised by the machine; whilst we must aim at the highest possible standard of efficiency, our purpose is not

to produce a robot-like, mechanically-perfect Civil Service. The recruit from the first should be made aware of the relation of his work to the service rendered by his Department to the community. The capacity to see what he is doing in a wider setting will make the work not only more valuable to his Department but more stimulating to himself. In addition, therefore, to purely vocational training directed to the proper performance of his day-to-day work, he should receive instructions on a broader basis as well as encouragement to persevere with his own educational development. Fourthly, even as regards vocational training, it is not sufficient to train solely for the job which lies immediately at hand. Training must be directed not only to enabling an individual to perform his current work more efficiently, but also to fitting him for other duties, and where appropriate, developing his capacity for higher work and greater responsibilities. Fifthly, even these ends are not in themselves enough. Large numbers of people have inevitably to spend most of their working lives upon tasks of a routine character, and with this human problem ever in the background, training plans, to be successful, must pay substantial regard to staff morale." They further said that the civil service and its attitude to the public should be readjusted and emphasised. "Among the common criticisms of the civil service there is one of such importance as to call for particular mention in any statement of the objects of the Civil Service training. This criticism relates to the attitude of the Civil Servant and of the Government Department to the Public. It is sometimes suggested that civil servants tend to form a class apart from the rest of the community and are apt to forget that John Citizen is a composite of innumerable individual John Smiths. Nothing could be more disastrous than that the

civil service and the public should think of themselves as in two separate camps. The inculcation of the right attitude towards the public and towards business should, therefore, be one of the principal aims of civil service training. The civil servant must never forget that he is the servant, not the master, of the community, and that official competence need not, and should not, involve the loss of the human touch. Many civil servants who are brought most frequently into contact with the public know and appreciate the value of the right attitude; others must be raised to the same standard, since the service is liable to be judged on the basis of innumerable daily contacts between members of the public and the Government machine." I may note that the term "Civil Service" as used here has not the same connotation as "Civil Service" in India, it really is equivalent to public services and refer to all grades of public servants.

I consider that the recommendation made in the report of the Committee on the training of civil servants that a staff college was essential in this country too in the existing circumstances where no other form of training could be effectively devised. It is essential to give at least the officers of the gazetted rank an idea of the different departments of the administration and how they all operate or should operate to the service of the entire social organism. The details of the staff college I need not go into. These must have to be worked out with great care and on the basis of a realistic realisation of the conditions that now prevail. Mere theoretical knowledge without some sort of practical demonstration would be of little avail as they of the committee in England emphasised. Much has got to be looked into from the teachers and the selection of the teachers of the right type is of the utmost importance. The training of the clerical staff for the different offices

is not less important than that of gazetted officers. In the quality of the clerical staff here there has been a marked deterioration. The old staff of sheristadars in the Collectorate might have had their blemishes but there can be no denial of the fact that their knowledge of law and procedure and a thorough familiarity with the precedents were marked. Their interest in the office as a whole and in its reputation was much greater than what could be found today. Some of these ministerial officers were promoted to gazetted ranks in those old days and some at least left their mark on administration. To-day we have to train the clerks in a much better way than they are trained now. Probably, arrangement for the training of new entrants could be organised under the Collectorate Superintendent of known abilities in one of the districts in a division. Certain extraneous matters need also to be looked into. A short booklet on the basic principles which the gazetted officers and the ministerial officers must observe in the solution of their various difficulties could easily be compiled. An *esprit de corps* for the entire branches thereof should be developed by the institution of clubs or associations. Today each department maintains an attitude of Armed neutrality towards other departments of the same administration as much as towards the public. The departments seem to forget that they work for a common end. An officer who is indifferent in attitude to the service of the people and of the country and develops any attitude that thwarts this object stultifies his very existence. Such an attitude should meet with short shrift. Libraries are very much wanted. Books are often missed or lost and seldom replaced. The committee in England suggested that every department should have a well-stocked and attractive library related to its sphere of interest and they emphasised that the

development of this kind should not be hampered on ground of expenses. Money spent on training will show a good return. I would, therefore, suggest in summary that every hindrance to the development of the best attitude towards and in the service of the administration should be removed at once. No political slogans, or the vested interests of any sort, should stand in the way of the community obtaining those wider services at the highest that the country demands. The tax-payers pay for the best that is available in the country and should be content with nothing less. To give him less by employing worthless men would be a crime against the nation as a whole and would be unpardonable.

A staff college whether run in association with the University or independently by the state should be organised. A thorough training for the Clerical Staff should also be attempted. They could all be organised at an economic cost. The money spent on training, as the committee in England stated, would repay itself and probably lead to many savings at many places to cover the outlay made by the efficiency fostered and encouraged. Corruption would disappear by the very attitude developed and by the spiritual growth of the services throughout.

The most efficient and incorruptible public services should be India's target definitely and unequivocally.

SUMMARY OF PART III

The standard of conduct of Public Servants at the highest must be set by Ministers. Public appreciation of officials' work and a capacity for righteous judgment by Newspapers and Publicmen must be developed.

Interest in administrative problems must be developed by encouraging reasoned and scientific discussions

in journals. Communal or caste considerations in making appointments must be abjured. The best and the fittest on economic remuneration must be secured. The Public Services Commission must be no sport of patronage of Ministers or the Governors. Public Servants must have a highly developed sense of responsibility, the higher the position the greater must be this sense. Superior officers must have definite responsibility for undetected corruption. Ministers must have a developed code of ethics in their attitude to the problems and to the personnel of the Public Administration. Improvements in general procedure suggested to obviate chances of corruption. Public offices must function publicly. A manual with clear details for the disposal of Revenue cases in every branch and available to the members of the public is called for. Improvements in the disposal of communal cases to avoid corruption suggested.

The Training of officers—the extreme importance of training officers at every level suggested if efficiency is to improve and the best use of expenditure is to be made.

APPENDIX I

Extracts from the Report of the Bengal Administration Enquiry Committee 1944-45.

MAINTENANCE OF EFFICIENCY

215. In our judgment a much more robust attitude should be adopted to those civil servants who are adjudged to be inefficient. An adverse report in the Character Roll is not at present treated as disqualifying an officer from passing an efficiency bar, still less as a ground for withholding an annual increment. Indeed, we have seen a statement to the effect that "mere inefficiency is no bar to crossing the efficiency bar". We are strongly of the view that no increment should be granted to a civil servant whose service during the preceding year has been deemed to be unsatisfactory and we do not think that the stoppage of an increment should be dependent on the institution of proceedings against the officer concerned, although he should, of course, be shown a copy of the adverse report on the basis of which it is proposed to stop his increment and be given an opportunity to appeal against the report.

216. So far as efficiency bars are concerned, the passing of the bar should depend not on the absence of an unsatisfactory report but on the positive statement of the reporting officer that the service of the officer reported on has been such as to justify the passing of the bar. We understand that this is the rule at present, but it is so weakly applied that it is, for practical purposes, inoperative.

217. Cases of persistent inefficiency which the officer concerned had made no serious attempt to remedy should be treated by dismissal from the service, or at least by compulsory retirement.

SERVICE MORALE

218. Morale in the Public Service is compounded of many factors—reasonable conditions of service, satisfactory conditions of work, the feeling that one is part of an efficient machine and doing a worth-while job in the service of the community; and, lastly, that one's worth will be judged and one's advancement be determined with reference solely to one's ability and zeal in the discharge of one's duty. It is in respect of this last factor that we have observed anxiety and disquiet in the minds of several witnesses who gave evidence before us.

219. We have been told that there has been a marked deterioration in the morale of the services as a result of the impact of political forces on the framework of the permanent administration. The services apprehend that amenability to Ministerial pressure and a "correct" attitude towards questions in which the Party for the time being in office is particularly interested are more likely to lead to promotion than administrative efficiency.

221. In the United Kingdom it is a serious offence for a Government servant to address a Minister with a view to securing some personal advantage. We feel the need for a similar rule in Bengal, and we recommend the amendment of the Government Servants' Conduct Rules so as to make it an offence for a Government servant to seek a personal advantage from a Minister.

ATTITUDE TO THE PUBLIC

222. We received, with surprise and regret, evidence from more than one source that the attitude of some civil servants towards the public left much to be desired. It was alleged that they adopt an attitude of all of superiority appear to pay greater regard to the mechanical operation of a soulless machine than to promoting the welfare of the people and look upon themselves as masters rather than as servants of the public. That this is the attitude and outlook of the average civil servant we do not believe, but the feeling to which we have referred is held too strongly not to have some basis of fact. Such an outlook and attitude is, of course, entirely wrong, and contrary to the traditions of the Service. It must be impressed upon the offending minority that they are the servants and not the masters of the public, who, incidentally, are their paymasters, that they should behave towards the public with civility and courtesy and with every desire to help rather than to obstruct. The necessity for cultivating such an attitude should form part of the training courses which we recommend below, especially for those whose duties are likely to bring them into daily contact with the public.

B. BRIBERY AND CORRUPTION

223. Petty corruption on the part of minor officials appears to be endemic in Bengal as it is in most other parts of India. With such exceptions, however, it is generally acknowledged that, formerly, the public service in Bengal enjoyed a high reputation for integrity, but that, in recent years, the position has greatly deteriorated, especially since the war began seriously to affect India. The war here, as elsewhere, breeds conditions which make money making easy. Particularly did this become so when

the supply of commodities became so short that Government was forced to grant licences to trade in them. The possession of a licence became a thing of high value and dishonest and unscrupulous persons did not hesitate to offer bribes in order to secure the licence to trade in the commodities affected. The power to grant licences was in many cases in the hands of temporary staffs not versed in the traditions of the Service, with no prospect of a permanent career in it and provided with an opportunity for making easy money which many of them found it impossible to let slip.

226. Examples of the defects in the Law are :—

- (1) offences under sections 161 and 165 of the Indian Penal Code are non-cognisable ; which means that even if the Police hear that a bribe is to pass, they can do nothing about it until they secure the permission of a Magistrate to make the investigation. The delay in securing such permission may render effective action impossible ;
- (2) the penalties provided are in certain cases quite inadequate, e.g. the offerer of a bribe which has been resisted is subject to a maximum penalty of nine months' imprisonment.

227. So widespread has corruption become, and so defeatist is the attitude taken towards it, that we think that the most drastic steps should be taken to stamp out the evil which has corrupted the public service and public morals. Anything less is a denial of justice to the poor people of the Province who comprise the bulk of its population, and who, in the end, have to pay for the bribes which go to enrich the unscrupulous and the dishonest.

228. Like the causes, the remedies are both administrative and legal. Under the former, we recommend :—

- (i) that the greatest care should be taken in selecting officers authorised to grant permits, and that the rules prescribing the basis on which permits should be granted should be drawn up with the greatest precision ;
- (ii) that officers should exercise the strictest supervision of those staffs employed on duties likely to expose them to temptation. In such cases, the officers in charge should inspect their offices not only frequently but thoroughly ;
- (iii) that much more resolute action should be taken in any case where suspicion is aroused. Evidence has been tendered to us that, at present, officers in authority are little disposed to pursue *prima facie* cases for investigation ;
- (iv) that public servants should be enjoined to report at once any case where they have been offered illegal gratification ;
- (v) that where a public servant has been convicted of corrupt practices, he should be instantly dismissed and there should be no question of a grant to either him or his family or a compassionate gratuity, such as has happened in at least one case brought to our notice.

229. So far as the Law and legal processes are concerned, we propose :—

- (i) that offences under sections 161 and 165 of the Indian Penal Code should be made cognisable ;
- (ii) that section 162 of the Criminal Procedure Code should be amended to provide that statements made to a police officer in the course of an investigation

into a case of bribery shall be available for use as evidence. The immediate reaction of an offender on being caught red-handed by the police is much more likely to represent the truth than statements he may subsequently make when he has had time for reflection ;

(iii) that the Law should be amended on the lines of the United Kingdom Prevention of Corruption Act, 1906. This Act provides that, where any money, gift or other consideration has been paid or given to any person in the employment of His Majesty, or any Government Department, by any person or agent of a person holding or seeking to obtain a contract, the money, gift or consideration shall be deemed to have been paid or given or received corruptly, unless the contrary is proved. In brief, this means that, if money, etc. has passed between a public servant and a member of the public with whom he is in official relations, the onus of proof that the gift was innocent lies upon the offerer and the receiver of the gift. We have been told that many cases have arisen in Bengal where it could be shown that money had passed between a member of the public and a public servant, but that it was difficult to obtain proof that the money had been offered corruptly ;

(iv) that a new offence should be created providing that, if a public servant or his dependants are known to have become possessed of a sudden accretion of wealth, the public servant concerned would be deemed guilty of the offence unless he could prove that the accretion of wealth was innocently obtained. This is, of course, a wide extension of the provisions of section 9(1) of Ordinance 29 of 1943. Such

offences might well be tried by a Tribunal on the lines of that set up under the Ordinance mentioned.

EFFECT OF PUBLIC OPINION

232. The remedies which we have suggested above are directed to a short term treatment of the evil which has grown up. The ultimate sanction rests in a complete change of public opinion towards the offering and taking of bribes by members of the public and public servants respectively. Such offences should be regarded as a crime against the community.

RESTORATION OF THE TRADITIONS OF THE PUBLIC SERVICE

233. The lead should be taken by public servants themselves. They should once more be brought to regard bribery and corruption as the grossest dereliction of duty and the foulest slur on the traditions of the Service. Public servants should indeed go further. They should not only be honest, but should avoid placing themselves in a position in which they might be suspected of dishonesty. We cannot, we think, do better than quote extracts from a Report of a Board of Enquiry which was set up in 1928 to investigate certain statements affecting members of the Home Civil Service :

" 56. The first duty of a Civil Servant is to give his undivided allegiance to the State at all times and on all occasions when the State has a claim upon his services. With his private activities the State is in general not concerned, so long as his conduct therein is not such as to bring discredit upon the Service of which he is a member. But to say that he is not to subordinate his duty to his private interests, nor to make use of his official position to further those interests, is to say no more than that he must behave with common honesty. The Service exacts

from itself a higher standard, because it recognises that the State is entitled to demand that its servants shall not only be honest in fact, but beyond the reach of suspicion of dishonesty. It was laid down by one of His Majesty's Judges in a case some few years ago that it was not merely of some importance but of fundamental importance that in a Court of Law justice should not only be done, but should manifestly and undoubtedly be seen to be done; which we take to mean that public confidence in the administration of justice would be shaken if the least suspicion, however ill-founded, were allowed to arise that the course of legal proceedings could in any way be influenced by improper motives. We apply without hesitation an analogous rule to other branches of the public service. A Civil Servant is not to subordinate his duty to his private interests; but neither is he to put himself in a position where his duty and his interests conflict. He is not to make use of his official position to further those interests; but neither is he so to order his private affairs as to allow the suspicion to arise that a trust has been abused or a confidence betrayed. These obligations are, we do not doubt, universally recognised throughout the whole of the Service; if it were otherwise, its public credit would be diminished and its usefulness to the State impaired."

APPENDIX II

ACT NO. II OF 1947

(Passed by the Indian Legislature)
(Received the assent of the Governor General on
the 11th March, 1947).

An Act for the more effective prevention of bribery and corruption.

WHEREAS it is expedient to make more effective provision for the prevention of bribery and corruption; It is hereby enacted as follows :—

1. (1) This Act may be called the Prevention of Corruption Act, 1947.

(2) It extends to the whole of British India and it applies also to all British subjects and servants of the Crown in any part of India and to British subjects who are domiciled in any part of India wherever they may be.

(3) Section 5 shall remain in force for a period of three years from the commencement of this Act.

2. For the purposes of this Act, "public servant" means a public servant as defined in section 21 of the Indian Penal Code.

3. An offence punishable under section 161 or section 165 of the Indian Penal Code shall be deemed to be cognizable offence for the purposes of the Code of Criminal

Procedure, 1898, notwithstanding anything to the contrary contained therein ;

Provided that a police officer below the rank of a Deputy Superintendent of Police shall not investigate any such offence without the order of a Magistrate of the first class or make any arrest therefor without a warrant.

4. Where, in any trial of an offence punishable under section 161 or section 165 of the Indian Penal Code, it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate ;

Provided that the Court may decline to draw such presumption if the gratification or thing aforesaid is in its opinion so trivial that no inference of corruption may fairly be drawn.

5. (1) A public servant is said to commit the offence of criminal misconduct in the discharge of his duty—
- (a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in section 161 of the Indian Penal Code, or
 - (b) if he habitually accepts or obtains or agrees to accept

or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or

- (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do, or
- (d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.

2. Any public servant who commits criminal misconduct in the discharge of his duty shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

3. In any trial of an offence punishable under subsection (2) the fact that the accused person, or any other person on his behalf, is in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the Court shall presume, unless the contrary is proved, that the accused person is guilty of criminal misconduct in the discharge of his official duty and his conviction, therefore, shall not be

invalid by reason only that it is based solely on such presumption.

4. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, a police officer below the rank of Deputy Superintendent of Police shall not investigate any offence punishable under sub-section (2) without the order of a Magistrate of the first class or make any arrest, therefor, without a warrant.

5. No Court shall take cognizance of an offence punishable under section 161 or section 165 of the Indian Penal Code or under sub-section (2) of section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction,

(a) in the case of a person who is employed in connection with the affairs of the Federation and is not removable from his office save by or with the sanction of the Central Government or some higher authority of the Central Government ;

(b) in the case of a person who is employed in connection with the affairs of a Province and is not removable from his office save by or with the sanction of the Provincial Government or some higher authority of the Provincial Government ;

(c) in the case of any other person, of the authority competent to remove him from his office.

7. Any person charged with an offence punishable under section 161 or section 176 of the Indian Penal Code or under sub-section (2) of section 5 of this Act shall be a competent witness for the defence and may give evidence, on oath, in disproof of the charges made against him or

any person charged together with him at the same trial :
Provided that—

- (a) he shall not be called as a witness except on his own request,
- (b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial,
- (c) he shall not be asked and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless—
 - (i) the proof that he has committed or been convicted of such offence of admissible evidence to show that he is guilty of the offence with which he is charged, or
 - (ii) he has personally or by his pleader asked questions of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or
 - (iii) he has given evidence against any other person charged with the same offence.

CRITICISM

The Act will fail in its object which must be presumed to be the rooting out of corruption from the public administration. If one looks about he will discover corruption rampant. The number of cases where culprits have been

detected and successfully prosecuted or punished he will discover to be exceptionally few. It is no answer to say that the number of prosecutions in figure is larger now, than in any previous years. The test is what proportion of the growing number of culprits is being detected and to what extent the system of corruption is being checked up and the social organism is being served with purer agency. One will discover that the proportion of detection is exceptionally poor and that the system of corruption is spreading rather than being checked up. The reasons are that no one is interested in the detection except the suffering public and that the public can complain and, except by direct action, which cannot be permitted in a lawful society, he can take no effective steps. Moral sense cannot be directly improved by law but the defects in the law can be removed. Defects in law are firstly the delay in action and Section 5, does not remedy it; secondly, the difficulty to get the types of evidence that will be possible to be adduced and made admissible. Except Section 4, which has little practical value and Section 5(3) which is certainly important, the difficulties have not been tackled as the situation demands or effectively met. No improvement is made in the hopeless position experienced in getting evidence for a conviction under the existing sections of the Law of Evidence. No one doubts that the position is difficult and the proofs to establish the guilt of a citizen or of an officer must not be made too easy; but things cannot be left at that and solutions must be found to meet the situation. Solutions are possible. Thirdly no provision is made about the disposal of the ill-gotten money. It is true that an officer found guilty of Criminal mis-conduct under Section 5(2) of Act II of 1947 is liable to a fine and the amount of fine is not mentioned. Similarly an officer convicted under Section

161, I. P. C. is also liable to a fine the amount of which too is not limited. But the maximum amount of fine may be a fraction of the ill-gotten wealth. These provisions therefore, are not enough and will be infructuous. Suppose a man drawing Rs. 500/- (Five hundred) a month is convicted on two specific counts of having accepted bribes for a total sum of Rs. 1,000/- (Rupees one thousand) only. He may be fined Rupees five thousand. In course of investigation it is found that he is worth several lakhs. Now there is nothing to prevent him from passing on the lakhs to his relatives by gift or otherwise and be better off by the process and secondly in the present state of moral values a man may be perfectly prepared to suffer some years' rigorous imprisonment if he can secure several lakhs and profit by his dishonesty. There should be clear provisions to freeze the entire property of the accused suspected to have been dishonestly acquired as soon as the enquiry is started and definitely confiscated to the state after the guilt is established. There should be power to confiscate the entire amount found after enquiry to be ill-gotten or secured through misuse of his official powers and credited to the state. I am prepared to say that this power of the state should be extended even if the guilt is established after death. There should be provisions for such confiscation even if the author of the ill-gotten acquisition is dead and the successors are in possession. A time limit after death may however be fixed. The confiscated amounts may be used for public good.

Act II of 1947 is thus wholly inadequate to meet the exigencies of the situation.

One is prepared to agree that there is no corresponding law in England except the United Kingdom Prevention of corruption Act of 1906. But it has to be remembered that England had not had to meet, except very partly when

the Romans left in the fifth century, the internal, the external and the world situation which India has to meet after the 15th August 1947. England with its stabilised standards of values and national character has today only to prune up here and there and only reform. But India has to build up from the scratch out of the spiritual, mental, moral, and material debris in which England left her to a first class National State, in the context of the 20th century world. India's need for fighting corruption is by far the more urgent.

APPENDIX III

NOTE AFTER DISCUSSION WITH AMERICAN POLICE STAFF ON AMERICAN PROCEDURE OF DETECTING SYSTEM BY POLICE

In America crime developments were met with efficient administrative organisations—a brief resume of which is noted. The Federal Bureau of Investigation (popularly known as F. B. I.) is an important and an interesting development.

F. B. I. is an organisation under the Justice of the Federal Government and headed by a Director of Federal Bureau of Investigations. It has a staff to enquire and follow up Crime

- (a) generally relating to transgressions of Federal Laws and
- (b) where more than one state are concerned in a crime or
- (c) its assistance is needed.

It collaborates with but does not supersede the State Police. Its staff consists of men selected generally from the best students of the University in different spheres—Law, Economics, and Technical. They are trained at the start and called up from time to time for Refresher Courses to be kept up-to-date in the matter of information regarding developments where they may be called upon to enquire. They are well-paid.

The Federal Bureau also has the co-ordinating task both in the matter of crime records or finger impressions of identity of criminals and in investigating where crimes concerning more than one state are concerned.

II. The State Police acts under the Commissioner of Police of the State. There are different branches thereof—the trooper who is recruited from good University educated men is at the centre of the organisation in each district. He has a uniform, a credential certificate and has power of investigation and of arrest. He is given a five months' course and then given a Refresher Course from time to time. The force is encouraged to develop an esprit-de-corps, a high Code of Honour and a high standard of efficiency. A black-sheep is spotted out and is fired. He gets the backing of the administration as well as of the public and keeps out of politics. Except the Governor, Members of the diplomatic services and generally the members of Parliament, he can arrest anyone whenever he has proofs. About the last he can arrest if circumstances justify. Village Police is paid often on "out of pocket" expenses system. The interference by Ministers in investigations is unknown and is strongly watched by the Public.

III. Investigation is very efficient. Each State has a Central Organisation which links it telephonically with main centres. The Central places are linked up with other States and all the States are linked up with Washington telephonically. Tell-a-type immediately records messages, and a person under arrest can have his identity and previous history or other information enquired into at the shortest time, say, within a few hours.

CRITICISM

India has a dilatory and an undeveloped crime detection and criminal investigation system to-day. With communications developed, scientific criminals and mobile transport will come to operate to their aid. It is essential to develop co-ordination within the province, between Provinces and

between Provinces and Centre if quick successful detection and a prevention are to be aimed at. Experts similarly should be developed for detection of Crimes, as criminals develop and take to crimes with brains and scientific assistance as equipment. Large developments in Industries and Commerce will have scientifically developed corrupting systems to evade various Laws of Taxation, etc.

Unless preventive and detecting systems are developed scientifically to checkmate the rapidly developing crime instincts and organisations, the social organism can hardly escape serious victimisation. Developments must visualise provincial, inter-provincial and extra State crime organisation in India. These should operate in the Railway, Income-Tax, Customs and many other taxation systems.

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